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THE COURTS OF THE COUNTRY IN THEIR TREATMENT OF THE NEGOTIABLE INSTRUMENTS LAW.

The Commissioners on Uniform State Laws are now the official representatives of every state in the union, of its two Territories, its two Possessions and its one Federal District. Congress for its federal district and every legislative assembly acknowledging our flag, except in two states, have adopted the uniform Negotiable Instruments Law.

What does this unanimity in purpose and practical unanimity in result signify? If there is not meant, that it is desirable to attain for our country one rule of right and obligation in every sort of legislation that follows adoption of recommendation by these commissioners, then the states and their commissioners have been staging performances, merely in mimic roles, in America's theatre of progressive life.

It derogates in no way from the complete accrediting of these commissioners, that all of their recommendations have not received the seal of legislative approval, for when one such act as the Negotiable Instruments Law raises its head everywhere in our land, the progress of enactment as to other laws recommended by the Commissioners resolves itself into one inquiry of when states will get into line.

But what would it mean so far as decision is concerned, if every law such as this, the Warehouse Receipts Act, and the Bills of Lading Act were adopted by every state, territory and possession under our flag? Would it still remain that decision would hark back to the law merchant or some other principle in the nebular region of general commercial law? Would there even remain the rule of old, that in construing a new law you must look to the old law, the mischief and the remedy?

When the federal courts have refused to follow state decision when it concerned a principle of general commercial law, there seemed an implied lament that the responsibility was cast upon them to rescue something important from the iconoclasm of state ignorance or perversity.

In the days of varying statutes and varying decision outside of the reach of statute as to commercial matters, which should be similar among our closely related states, the federal courts may have thought, and probably did think, that their effort was the running of a thread of gold through the confused fabric of our law, or the supplying of a leaven that would one day leaven the whole mass.

Suppose we concede that the Negotiable Instruments Law is a vindication of the persistency of their struggle. We imagine it is not so difficult for these courts to so regard it. What should they do with it? Ignore it, treat it gingerly or welcome it with glad acclaim?

In this issue we publish what seems to us two of the most valuable contributions this Journal has ever had the pleasure of laying before its readers. They are not from the pen of a neophyte in the cause of uniform laws among the states as to the things that pertain to their growing interrelations.

From the first of the annual sessions of the Commissioners down to and inclusive of the twenty-third, Hon. Amasa M. Eaton, of Rhode Island, has given of his zealous labor to that cause and has noted with pride the importance which these sessions have taken on in the eyes of the country. Contrairiwise, he has observed the appreciation that their efforts, though stamped with the *imprimatur* of law, have failed either to receive from, or to be grudgingly granted by, the courts.

He tells us that of more than 1,000 cases arising under the Negotiable Instruments Law, only in two out of three—speaking roughly—has the law been cited. He also calls attention to the fact that there seems

little, if any, effort to correlate, so to speak, decisions in other states, so as to indicate that this law is accomplishing the uniformity which is the dominant underlying purpose of legislative action.

Are the courts *en rapport* with the states in not giving more than a sort of perfunctory—even if they do this much—obedience to legislative will, instead of displaying a generous rivalry in furthering it?

But if some state courts may be deemed derelict or luke-warm in this, what example should be set for them by the federal courts? If forty-six states have the Uniform Negotiable Instruments Law, are not its provisions the successors of every provision of the law merchant, that the federal courts appeared so desirous to maintain inviolate in this land? They, however, were not wedded to this desire because of the particular excellence of law merchant, but because there was need of some general law for our commercial conditions as its successor. To ascribe to them anything else would be to suppose them impatient with the limitations of their province. They waited and struggled for a sort of uniformity of ruling everywhere or must be so presumed.

Now that this law gives it, their zeal should take the direction of showing how excellent it is that all judicial brethren dwell in amity, under its sanction. Alas! See the record carefully made up by our contributor and herein published.

He tells us of twenty-five cases, giving their titles and where they are found, arising under the law and only in thirteen of them is it referred to, and close reading of these thirteen seems to have carried into our contributor's mind the idea that there was more chariness than welcome for its presence. Of the twelve not citing the law, there seemed something of a studied ignoring of its existence.

Why all of this? In some instances it seems the fault of counsel, but the disposition of the courts themselves towards the law largely would correct this fault.

We have heard lately about the desirability of uniform procedure in actions at law in all federal courts and one of the reasons is that administration of law in federal courts would be greatly improved, because federal judges are not expected to be so well informed about local rules and regulations. But they ought to be informed about a law which exists in nearly every state of the union and ought to try to apply its benefits and burdens to both parties, who are governed by it at their own homes.

Is it not a singular thing that the accident of a citizen's case being tried away from his home gives to him and his adversary a different law from what both are used to at their own homes? And then, what a travesty on speech it is to say this is the general commercial law of the country in which they live? It really looks like the federal courts in seeking for general commercial law resemble the hunter who started out for a bear. He went home when the tracks looked too fresh. N. C. C.

NOTES OF IMPORTANT DECISIONS.

JURY TRIAL—CONSTITUTIONAL RIGHT AS AFFECTING THE POWER OF COURTS TO DIRECT A VERDICT.—Possibly no decision by a bare majority of the U. S. Supreme Court has caused such an unanimity of adverse comment as that in Slocum v. N. Y. L. Ins. Co., 228 U. S. 364, as to which we made editorial comment in 76 Cent. L. J. 387.

The decision fell like a bomb upon the movement for the reform of judicial procedure and though representatives of the American Bar Association, to whom was specially delegated care of this movement, sought to obtain a rehearing, this was denied.

Now we find a later decision by the Supreme Judicial Court of Massachusetts squarely disapproving the reasoning in the Slocum case, citing a great abundance of state cases in its support, in addition to those, it discusses at length in the opinion. The opinion is in the best style of the Chief Justice of the Massachussets Court, and we present the summary of his conclusion in his own words:

"We are of the opinion that the history of our practice as to trial by jury both before and since the adoption of the Constitution shows that the trial by jury of our Constitution has slightly more flexibility in its adaptation of

details to the changing needs of society without in any degree impairing its essential character than is ruled by the majority of the court in Slocum v. N. Y. Life Ins. Co. We are constrained not to adopt the reasoning or the conclusion of that opinion ac correctly defining the scope of legislative power under our Constitution. St. 1909, c. 236, is not in violation of our Constitution. This result is in harmony with the decisions of many other courts.[1] We do not rest this judgment upon their authority, however, for we have not undertaken the historical study of the several constitutional provisions under which they have arisen to determine their weight." Bothwell v. Boston Elevated Ry. Co., 102 N. E. 665.

PRINCIPAL AND SURETY—THE RULE STRICTISSIMI JURIS LIMITED TO VOLUNTEER SURETY.—We discussed in 77 Cent. L. J., 262, the so-called abatement of the rule strictissimi juris, so far as companies in the business of becoming sureties are concerned, taking the view that in essence they were not sureties for the obligor, but guarantors to the obligee, because of the consideration of their obligation moving from the obligee.

In Kansas Supreme Court we find a case where the interest of the surety in the contract was in the proceeds arising out of its being made. First Nat. Bank v. Livermore, 133 Pac. 734.

The facts show that a corporation gave its note, signed by one of its directors, as surety for the raising of money for its benefit. At its maturity, the cashier of a bank holding the note took a new note, but did not surrender the old note. It was ruled by the court that the presumption was the old note was extended, where there was no evidence to show a contrary intention. The directors who signed as sureties were the prinicipal stockholders of the corporation for which they signed as sureties. They claim they were released.

The court held that the rule strictissimi juris was entirely technical, saying: "The real basis of the rule is that sureties are favorites of the law and its application may well be limited to those who assume an obligation for others, having no personal interest in the matter." In support of its decision it takes surety company cases as analogous, but this case more properly stands as being rightly decided, because the corporation scarcely could be differentiated in its personality from its directors and principal stockholders. They had it in their power to control its acts in accepting the extension. The ruling was against the sureties.

CONFIDENTIAL RELATION—TEST OF ITS EXISTENCE AND BURDEN OF PROOF IN TRANSACTIONS.—There seems no great need to bring within the rule of confidential relations every situation where there is merely trust reposed by one in the friendliness and integrity of another, with whom the weaker party may enter into contracts. But such seems about the position occupied by the minority of three of Missouri Supreme Court in the case of Cohron v. Folk, 158 S. W. 603.

This was a case going from division to full court, where, one of the judges not sitting, W. C. Bryan, of St. Louis, was called in as a special judge to remove, so to speak, a deadlock between the remaining six. It does not seem to us possible for plaintiff in equity to have been thought to be entitled to recover except under a vigorous application of a merely administrative rule that: "Where a confidential relation is shown to exist between parties to a contract, the burden of proving the bona fides of the contract is on the beneficiary thereof."

In the first place, this rule, to have any logical application, should proceed upon the theory, that the dependent, ward, patient, client or other, has been overreached in some way, for in every contract there are at least two beneficiaries—each receiving a consideration therefrom.

It is far enough to go, in sensible protection of the dependent, to say, as did the court from whose decision we have just qouted, *supra* that the contract when challenged as against the other party "should be closely scrutinized to see that no improper advantage has been taken or undue influence exerted," Martin v. Baker, 135 Mo. loc. cit. 503, 36 S. W. loc. cit. 571. This observation is

(1) Anderson v. Fred Johnson Co., 116 Minn. 56, 133 N. W. 85; Muench v. Heinemann, 119 Wis. 441, 448, 6 N. W. 800; Hay v. Baraboo, 127 Wis. 1, 105 N. W. 654, 3 L. R. A. (N. S.) 84, 115 Am. St. Rep. 977; Cornette v. Baltimore & Ohio R. R., 195 Fed. 59, 115 C. C. A. 61; Bailey v. Willoughby, 33 Okla. 194, 124 Pac. 955; McVeety v. Harvey Mercantile Co. (N. D., Jan., 1913), 139 N. W. 586; Fishburne v. Robinson, 49 Wash. 271, 95 Pac. 80; Roe v. Standard Furniture Co., 41 Wash. 546, 83 Pac. 1109; Cruikshank v. St. Paul Fire & Marine Ins. Co., 75 Minn. 266, 77 N. W. 958; Dalmas v. Kemble, 215 Pa. 410, 64 Atl. 559; American Car & Foundry Co. v. Alexandria Water Co., 221 Pa. 529, 70 Atl. 867, 128 Am. St. Rep. 749, 15 Ann. Cas. 641; Manning v. Orleans, 42 Neb. 712; Smith v. Jones, 181 Fed. 819, 104 C. C A. 329; Fries-Breslin Co. v. Bergen, 176 Fed. 76, 99 C. C. A. 384; Carstairs v. American Bonding & Trust Co., 116 Fed. 449, 54 C. C. A. 85; Richmire v. Andrews & Gale Elevator Co., 11 N. D. 453, 92 N. W. 819.

all the more pertinent when there is technically no confidential relation, but merely a friendship and reliance brought about through a long period of conduct by the superior party towards one needing kindness and charity.

It appears in this case that an old negress was alone in the world, without any known ties of relationship by blood or affinity, and had made a will whereby she had proposed to leave her house and lot and any personal property of which she might die seized to her church. She lived in one room of the house and rented another for $5 per month. She frequently spoke of selling the property, estimates on the value of which ran from $800 to $1,000. She sought a direct offer—solicited a purchaser for an immediate cash consideration of $475. This being made to her physician, he refused to purchase, because he was such. It appears she worked daily, and had a pension of $8.00 per month. It turned out that she sold to defendant, reserving a life estate and payments of $10.00 per month, not to exceed $300 and actually accepted three of such payments, grantee to pay taxes. There was no proof of concealment on the part of anybody, about the transaction, the old lady mentioning to others after the sale and the deed being recorded within a few days after it was executed.

The wife of defendant was charged with having exercised undue influence, but she was not shown to have had any relations with the old lady except that she lived near her, gave her ironing to do and did for her many acts of kindness for a long period of time. By the arrangement the old lady was assured of a material increase in her monthly income and no one testified that for the remaining days in the three months of her life afterwards, she ever uttered a word of complaint or that her confidence in the wife of the grantee was one whit diminished. On the contrary, when she came to die she took from under her pillow a purse of $87.00 and gave it to this wife to use in paying her funeral expenses and those of her last illness, this being done in the presence of others then at her bedside, none of whom ventured to declare she was not fully in her right mind.

We think the opinion of the special judge is commendable, for its clear, brief and well-enunciated views summarized in its saying that: "Even if we concede, for the sake of argument, that a confidential relation was shown * * * still we think the (plaintiff's) evidence affirmatively refutes the charge and rebuts the inference that there was any undue influence exerted."

THE ATTITUDE OF THE BENCH AND THE BAR TOWARD THE UNIFORM NEGOTIABLE INSTRUMENTS LAW.*

In 1890 the legislature of New York passed: "An Act to provide for the appointment of commissioners for the promotion of uniformity of legislation in the United States," Chapter 205, Laws of 1890.

The duty of this commission was "to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects, to ascertain the best means to effect an assimilation and uniformity in the laws of the states and especially whether it would be wise and practicable for the State of New York to invite other states of the union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states and to devise and recommend such other course of action as should best accomplish the purpose of the act."

This commission made a report to the legislature of New York in 1891 and other state legislatures adopted the recommendations of the New York Commission and appointed commissioners.

In 1895 a conference of such commissioners from a large number of states was held in Detroit and at that conference the committee on Commercial Law was instructed to prepare a codification of the law of bills and notes. This committee, in turn, referred the matter to a subcommittee, the members of which employed John J. Crawford, Esq., of the New York Bar, to draft

*Note.—The Hon. Amasa M. Eaton, of Providence, R. I., author of the foregoing articles, has been one of the Commissioners on Uniform Laws from the very beginning of the existence of that body, and what he says should have the presumption of authority in their favor. But the articles themselves are so excellent and instructive that they need no bolstering up, and we mention their source the better to secure their careful perusal by the judges of the courts to which they refer, to which courts we are sending this issue of the Journal. Additionally it may be said that our contributor is a recognized authority on the subject of Bills and Notes.

the proposed law. The bill prepared by him was submitted to the conference in 1896, and after consideration, section by section with the draftsman, and the adoption of a few amendments, was adopted by the conference and recommended to the state legislature for passage. It has been adopted and is now the law in forty-six states and other jurisdictions of our Union.

The courts of the country know the origin and history of the negotiable instruments law, that it is largely derived in its form and provisions from the English act upon the subject, that the great and leading object of the act, not only with the principal commercial states of the union that have adopted it, but also with the Congress of the United States in adopting it for the District of Columbia, was to establish a uniform system of law to govern negotiable instruments wherever they may circulate or be negotiated. Our courts know that it was not only uniformity of rules and principles that was designed, but also the embodiment in a codified form, as fully as possible, of all the law upon the subject, to avoid conflict of decisions and the effect of mere local laws and usages that had heretofore prevailed. The great object sought to be accomplished by the enactment of the statute was to free negotiable instruments, so far as possible, from all latent or local infirmities, whether resulting from statutes or judicial decision, that would otherwise inhere in it, to the prejudice and disappointment of innocent holders, as against all the parties to the instrument professedly bound thereby.

The object of this codification of the law with respect to negotiable instruments, was to relieve the courts of the duty of citation of conflicting cases and discussion of the discordant views entertained by courts and text writers of the greatest ability upon these questions, and to render certain and unambiguous that which had theretofore been doubtful and obscure, so that the business of the commercial world, largely transacted through the agency of negotiable paper, might be conducted in obedience to a written law emanating from a source whose authority admits of no question.

Where a statute is intended to embody in a code, a particular branch of the law and has specifically dealt with any point, the law on that point should be ascertained by interpreting the language used, instead of doing as before the statute was passed, roaming over a vast number of authorities in order to discover what the law is by extracting it by a minute, critical examination of prior decisions. If such a statute is to have read into it the law prior to its enactment, the value of codifying the law on the subject of negotiable instruments will be greatly impaired, if not destroyed, and the very object for which it was enacted will be frustrated. Where the language of such an act is clear, it must control, whatever may have been the prior statutes and decisions on the subject. Where there is a substantial doubt as to the meaning of the language used, the old law is a valuable source of information.

While the general purpose was to preserve the existing law, so far as it was uniform, yet in many respects in which there was a conflict or doubt, under the authorities, the language of the statute lays down rules which are not to be ignored simply because in some respects a change in the law is effected.

It is so much a matter of common knowledge as to make it proper to take judicial notice of the fact that the act was enacted because of an effort on the part of the bar of many, if not all, of the states of the union, to bring about a uniform system of law respecting negotiable instruments. In a substantial measure the effort has been successful, and it is manifest that one prominent motive leading to its enactment was the desire to establish a uniform law on the subject of negotiable instruments. And wherever these acts have received judicial interpretation in the several states, this purpose has been recognized. That this purpose was prominent in

the minds of the members of legislatures in enacting this law is shown by the title of the act itself:

"An Act to establish a law uniform with the laws of other states on negotiable instruments." The desirability of such legislation has been long felt by commercial people as well as by the judiciary and the bar at large.

The primary purpose of the adoption of the negotiable instruments code was to obtain uniformity of decision where before there was great diversity. The state legislatures having enacted the code in the identical language of each other (or nearly so) it would be unfortunate, indeed fatal, to such uniformity, if courts, under the pretext of judicial interpretation or construction, were so to vary and violate the plain provisions of the code as to undo and overthrow the very purpose of the code.

The statute was enacted for the purpose of furnishing in itself, a certain guide for the determination of all questions covered thereby relating to commercial paper, and therefore, so far as it speaks without ambiguity as to any such questions, reference to case law as it existed prior to the enactment, is unnecessary, and is liable to be misleading. The negotiable instruments law is not merely a legislative codification of judicial rules previously existing in this state, making that written law which was before unwritten. It is, so far as it goes, an incorporation into written law of the common law of the state, so to speak, the law-merchant generally as recognized, with such changes or modifications and additions as to make a system harmonizing, so far as practicable, with that prevailing in other states.

Some of the provisions of the law are simply declaratory of the existing law, while others in some states have altered or changed the law as heretofore declared. The purpose of the legislation is to produce uniformity on the subject among the several states, and to make certain and definite by statute, the rules of the law governing negotiable paper. The acts in the different states are very similar, many of their provisions being identical in language, and the manifest purpose of all is, as far as possible, to prescribe definite and fixed rules regulating the whole subject.

In all situations where the negotiable instruments law conflicts with prior adjudications, as to instruments made subsequent to that time, the former rules. The act itself should, and must control.

Prior to the adoption of this act by the various states in which it is in force, there was a great lack of uniformity in the statutes and in the decisions of the courts, with reference to the law merchant. A merchant engaged in business in one state and doing business with citizens in other states, would frequently find that a note which was negotiable under the law of his domicile was, in fact, non-negotiable at the place where it was executed or was to be paid. This led to great confusion in the conduct of commercial affairs. To obviate this difficulty, the negotiable instruments act was passed by the legislatures of several states. The provisions of these various acts are substantially the same and they should be construed so as to maintain as far as possible, the idea of uniformity. Where the negotiable instruments act speaks, it controls; where it is silent, resort must be had to the law merchant or the common law regulating commercial paper.

The negotiable instruments law is, in the main, merely a codification of the common law rules on the subjects to which it relates. It was intended principally to simplify the matter by declaring the rule as established by the weight of authority. There are few innovations in the law merchant as before settled by the courts. Where it lays down a new rule, it controls; but where its language is consistent with the rule previously recognized, it should be construed as simply declaratory of the law as it was before the adoption of the act.

It is matter of common knowledge that the negotiable instruments act was drafted for the purpose of codifying the law upon

the subject of negotiable instruments and making it uniform throughout the country through adoption by the legislatures of the several states and by the Congress of the United States. The design was to obliterate state lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange, to remove the confusion or uncertainty which might arise from conflict of statutes or judicial decisions among the several states and to make plain, certain and general the controlling rules of law. Diversity was to be moulded into uniformity. This act in substance has been adopted by many states. While it does not cover the whole field of negotiable instrument law, it is decisive as to all matters comprehended within its terms. It ought to be interpreted in such a way as to give effect to the beneficent design of the legislature in passing an act for the promotion of harmony upon an important branch of the law. Simplicity and clearness are ends especially to be sought. The language of the act is to be construed with reference to the object to be attained. Its words are to be given their natural and common meaning, and the prevailing principles of statutory interpretation are to be employed. Care should be taken to adhere as closely as possible to the obvious meaning of the act, without resort to that which had theretofore been the law of the Commonwealth, unless necessary to dissolve obscurity or doubt, especially in instances where there was a difference in the law in the different states.

By the enactment of the negotiable instruments law the legislature intended to cover the whole subject of negotiable instruments and thus to set at rest questions touching the rights of the parties which had theretofore been left to be determined by a critical examination of the prior decisions of the courts.

The primary purpose of the several states that have adopted the negotiable instruments act, has been to establish a uniform rule law governing such instruments, and to embody, in a codified form, as fully as possible, the previous law on the subject, to the end that the negotiable character of commercial paper might not be destroyed by local laws and conflicting decisions, and this object should be kept in mind in construing the various provisions of the act.

Let it not be thought that this is the overwrought statement of this law prompted by the vivid imagination of one of its admirers actively associated with its creation and with its subsequent adoption by the forty-six states, territories, districts and possessions of the United States in which it is now in force. This statement of the purpose of this legislation is not his work at all, but is made up, generally, in the very words used, from decisions by the courts in their opinions in cases arising under the law, decided by them.[1]

Per contra, see Mut. Loan Assn. v. Lesser, 76 A. D. 614, where it was held that in actions against the maker of negotiable promissory notes, there was conflicting testimony whether the words, "with interest," were on the notes when they were negotiated, or whether they were added afterwards. After dismissal of the complaints and upon appeal from judgments for the defendants, O'Brien, J., said:

"The fact clearly appears, however, and is not disputed, that the error which crept in upon the trial was in not drawing the court's attention to the provision of the

(1) Brewster v. Schrader, 26 Misc. 480, 1899; Wirt v. Stubblefield, 17 A. C. (D. C.) 283, 1900; Baltimore & Ohio R. Co. v. First Nat. Bk. of Alex., 102 Va. 753; 47 S. E. 14, 1904; Am. Bk. of Orange v. McComb, 105 Va. 473, 54 S. E. 14, 1906; Vander Ploeg v. Van Zuuk, 135 Iowa, 350, 12 N. W. 807, 107; Rockfield v. The First Nat. Bk., 77 Ohio St. 311, 83 N. E. 392, 1907; Dollar Sys. Bk. v. Barberton Pottery Co., 17 Ohio Decs. 539, 1907; Columbian Banking Co. v. Bowen, 134 Wash. 218, 114 N. W. 451, 1908; Wisner v. First Nat. Bk. of Gallatin, 220 Pa. 21, 68 Atl. 955, 1909; First Nat. Bk. of Shawano v. Miller, 139 Wis. 126, 129 N. W. 820,1909; Mechs. & Farmers' Bk. v. Katterjohn, 137 Ky. 427; 125 S. W. 1071, 1910; Campbell v. Fourth Nat. Bk. of Cinn., Ohio, 137 Ky. 555, 126 S. W. 114, 1910; State Bk. of Halsted v. Bilstad, 136 N. W. 204, 1912; Brophy Grocery Co. v. Wilson, 45 Mont. 489, 1912; Union Tr. Co. v. McGinty, 212 Mass. 205; 98 N. E. 679, 1912.

Negotiable Instruments Law which changed the old rule as to the voiding of a note in case it is altered." (Citing Laws 1897, c. 612, sec. 295).

It is not claimed that the attitude of the New York courts is one of hostility or even of indifference to the Act. On the contrary, in the case of Shattuck v. Guardian Tr. Co., 204 N. Y. 200, 1912, reversing the same case 145 A. D. 734, 1911; 130 N. Y. Supp. 658, 1912, it was held that the Act is one of those general statutes that promulgate rules of substantive law rather than those of pleading or evidence.

It is claimed, however, that the Negotiable Instruments Law now in force in forty-six states and subdivisions of the United States and the decisions under it are not receiving due consideration by the lawyers and judges of the country generally.

Taking part in framing and adopting the Negotiable Instruments Act as a member of the Conference of Commissioners on Uniform State Laws, of which he has remained a member ever since, the writer began at once to gather the cases arising under the provisions of that law, and for seven years while he was President of that Conference, he gave a summary of the cases during the past year. He has continued gathering these cases until he now has a collection of one thousand and eight cases, typewritten on three sets of cards, each card showing the sections of the Act applicable to the case, what section or sections were cited and what were not cited, the name of the case, where reported and the date, with a summary of the case, annotated when necessary. In seven hundred and four of these cases the Act was cited, in three hundred and eighty-seven cases the Act was not cited, although on the statute book of the state in the courts of which the case was tried. In 64.53 per cent of these cases the Act was cited, in 35.47 per cent it was not cited. In the count of cases in which the Act was cited are included eight cases in which counsel cited the Act but in which, nevertheless, the Act was ignored in the decisions. In addition there were many cases, fifty or more, in which, although certain sections of the Act were cited, other sections of the Act applicable to the case were not cited.

It is submitted that it is no excuse or reason for omitting to cite the Act where it is in force, that the decisions are in accord with its provisions. It is true the Act, in the main, is but a statement in concise forms of well recognized principles of the law merchant governing negotiable instruments, except in those cases where divergent principles previously followed in many courts, called for the adoption of one principle and the precedents under it and the rejection of the opposite or contrary principle. But whether the Act follows some principle concerning which there is no difference of opinion, or whether it follows one of two divergent principles and thereby negatives any contrary principle hitherto followed in some jurisdiction adopting the Act, it is confidently and strenuously insisted that when adopted, the Act itself is the source of authority and the only source of authority, and therefore it should be cited and followed and decisions under the same sections in cases under the same law are the only real precedents. Of course, former decisions and old text books may be cited by way of illustration or explanation or to explain the historical development of the principle involved, but the real authorities are the provisions of the Act and the decisions under it, whether in the state where the particular case is being argued or whether they be decisions in the courts of other states under the same sections of the same uniform law. It is only by following this course that uniform decisions under a uniform law can bring about uniformity throughout the nation.

In further proof of the conclusion that the bar and the bench of the whole country have in many cases, failed to grasp the real and deep significance of the movement for uniformity of legislation, examine these cases and note in how few of them the de-

cisions in other states under the same sections, are cited.

Remember, further, that in every one of those cases where the Act is not cited—more than one-third of all the cases—no mention is made of the actual law on the statute book, the real source of authority for the decision. Much more is meant by this failure to cite the Act than is apparent upon the face of the mere statement, for in every such case no mention is made of the decisions in other states of cases arising under the same sections of the same law, and the Act has been in force long enough now for the accumulation of many such decisions.

Uniformity of decisions under a uniform law is absolutely necessary to real uniformity, and how can there be such uniformity in decisions without citation and following the decisions of other courts upon the same sections of the uniform law?

It is not because some of the cases we are about to examine are erroneous that these articles are written, but because we would arouse the attention of the members of the profession of the law throughout the country to the fact that the effort made by the Conference of Commissioners on Uniform State Laws to secure uniformity, is not being seconded as it should be, by the members of the bar nor by many of the courts before which cases under the Act are argued.

It is a constant subject for marvel that the very courts that cite the Act may ignore it in the next case, although equally applicable. This shows that want of knowledge of the existence of the Act cannot be offered in explanation. Surely, by this time, whenever a case arises in any court in a jurisdiction where the Act is on the Statute book, the first inquiry should be, what has the Act to say on the law of this case, and the next inquiry should be, what are the decisions under this Act, in the different jurisdictions in which it is in force? In every case in which the writer is of counsel in preparing his brief, he examines every case under the section or sections in question, in every state that has adopted the Act.

Jurists hope for the growth of a body of international law through the decisions of Courts of Arbitration at the Hague.

Just so we may hope for the growth of a body of interstate law in commercial matters through uniform decisions in the state and federal courts in cases arising under a uniform law in force in the same words in the different states of our Union. But this can only come about through the citation of and following as precedents, decisions in the various states under the uniform law. Our object is to arouse the attention of our judges and lawyers to the necessity of doing so.* AMASA M. EATON.

Providence, R. I.

*Following this article is appended a criticism of the Federal Decisions in which the Negotiable Instruments Law has been construed or where it should have been the basis of the decision and wherein its provisions were not cited and the decisions of other states thereon ignored; in place of which, however, the courts cite the old common law decisions and the old text books as if they were now the source of the law instead of the act itself.

THE NEGOTIABLE INSTRUMENTS LAW IN THE UNITED STATES COURTS.—A CRITICISM OF METHODS OF CONSTRUING UNIFORM LAWS.

The attitude of the Courts of the United States towards the Negotiable Instruments Law now in force in forty-six of the states and other subdivisions of the United States, furnishes an interesting subject for examination. There are already twenty-five of these cases in which various sections of the Act in question were invoked.

In only thirteen of these cases was this law (hereinafter called the Act) referred to, and in one of these cases, although one section was cited, another section applicable to the case was not cited. In twelve of these cases, the

Act was not even referred to, and, of course, in all such cases there is no citation of any case decided under the same section of the same law in any other state that has adopted the same law.

The following is an examination of these cases. The section numbers first given are those of the New York Act. Those in brackets are the numbers as the Act was adopted by the Conference.

In re McCORD, 174 Fed. 72; 98 C. C. A. 623 (N. Y. 1907.)

It was held in this case that the mere fact that the indorsers are accommodation indorsers, known to each other to be so, is sufficient, without proof of an express agreement to change the general rule of law that prior indorsers are liable in solido to subsequent indorsers who have paid a note, citing sec. 55, 114, 118, (29, 64, 68) and four old cases. No given for a loan under a usurious contract, been thirteen cases under sec. 55, twenty-five under sec. 114 and six cases under sec. 118.

WOOD v. BABBITT, 149 Fed. 818 (1907).

The holder of a note, alleged to have been cases under the sections stated are cited, although at the time of this decision there had who paid full value before maturity and without notice of any illegality or infirmity connected therewith, can recover upon the note.

See sections 91, 94, 95, 96, 98 (52, 55, 56, 57, 59). The Act was cited in the opinion, but no cases under these sections were cited, although there were hundreds of them, while the opinion cites seven old cases.

It is submitted that this is misleading. Old cases may be cited by way of illustration or to explain the historical growth of the principle involved. But when the principles involved in a case are fixed in a code that is a uniform code in the states adopting it, it is not only the source of authority for the decision, the cases decided under it are the precedents to be followed and cited by the court.

CHESTERTON BK. v. WALKER, 163 Fed. 510; 90 C. C. A.; 140 (Mo. 1908).

An interesting case, one in which correctness of the decision is not questioned, but attention is drawn to the fact that had the learned court cited sec. 21, (2) of the Act in force in Maryland when this decision was handed down, the citation of old cases might have been dispensed with and in their place the case of Ex. Bk. v. Appalachian Land & Lumber Co., 128 N. C. 193, 1901, the only case that up to 1908 had risen under this section of the Act, (although the Act was not cited,) might have been cited.

In Chesterton Bk. v. Walker, ut supra, it was held that an agreement in a note to pay a collection fee if not paid at maturity, is valid, to the extent of a reasonable fee actually expended or agreed to be paid, but no further.

In Ex. Bk. v. Appalachian Land & Lumber Co., ut supra, a provision in a note for payment of attorney's fee, in case of dishonor, etc., was held to be invalid, citing numerous old cases but ignoring the law in force, for the note was dated June 15, 1899 and the Act went into effect in North Carolina, March 28, 1899. Although the note was executed and made payable in Georgia, where the Act has not been adopted, the court held that the provision for attorney's fees "in case suit is necessary for collection," is no part of the indebtedness, for the note could have been discharged before action was brought, by payment of the note and interest, as agreed on its face. This further incident was only by way of penalty in case of suit, affecting only the remedy; and therefore the lex fori governs, when action is brought.

There can be no question now that under the Act such a clause does not render a note non-negotiable. It is submitted, however, that this does not accord with the spirit of the law merchant, and it is to be regretted that it has been allowed to become law.

In Morrison v. Ornbaum, 30 Mont. III., it was held that a note payable with reasonable attorney's fees, entitles the holder to collect such fees, when the note is not paid at maturity and it is placed in the hands of an attorney for collection, even though no suit is brought; citing Session Laws 1899 p. 124 as the source of authority. The date of the note is not given, but the opinion states that it was before the date of the adoption of the Act.

REYBURN v. QUEEN CITY SGS. BK. & TR. CO., 171 Fed. 609; 96 C. C. A. 373. (Pa. May 17, 1909.) See s. c. as Queen City Sgs. Bk. & Tr. Co. v. Reyburn, 163 Fed. 597 (1908).

Promissory notes, made, indorsed and the discount thereof procured by the payee on an agreement that the maker and payee should divide the proceeds equally and pay the note equally, are not accommodation notes and do not give the maker the character or rights of an accommodation maker, to affect the status of a bona fide purchaser for value.

The Act was not referred to by either decision. See sec. 55 (29). "An accommodation party is one who has signed the instrument as maker, drawer acceptor or indorser, without receiving value therefor, and for the purpose

of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

While it is evident that the parties were in reality joint makers and there was no accommodation party, the fact that even if there had been an accommodation party, he would be liable, under the above section, does not appear, because of the omission to cite sec. 55 (29), or any of the cases in which it was applicable.

FIRST NAT. BK. of WILKESBARRE v. BARNUM, 160 Fed. 245, (1908).

The plaintiff is not a holder in due course when it took the notes sued on, knowing them to be infirm through material alterations made without authority.

Sections 91 and 205, (52 and 124), are cited and followed, but without mention of any one of the twenty cases that arose under sec. 205, (124), before 1908, nor of any one of the sixty-seven cases that arose under sec. 91 before 1908.

FORREST v. SAFETY BANKING & TRUST CO., 174 Fed. 345, (Pa. 1909).

A certificate of deposit recited that F. had deposited in the defendant company $3,000, to the credit of himself, payable in current funds on return of this certificate properly indorsed on July 1, 1909—Interest 3½ per cent per annum. "This certificate of deposit is not subject to check and is only payable at maturity." It was held to be a negotiable instrument, although the learned judge cited the Act, in force in Pennsylvania. This unfortunate result was reached by citing 5 Am. & Eng. Encyc. of Law, 803, 2nd. Ed. and the cases there cited, the question there being whether a certificate of deposit is a negotiable instrument. The learned judge recognized the fact that these cases in general found such certificates to be negotiable when payable to order (although some courts failed to make a distinction between certificates payable to order and those payable to the depositor) and held, p. 347, "The present certificate is in effect payable to Fallon or his order, for this is necessarily implied by the phase "properly indorsed," a conclusion, we humbly submit to, which no one learned in the custom of merchants, the history of bills and notes and the Act, can subscribe. If a promissory note should read "I promise to pay to John Smith one hundred dollars when this note is properly indorsed," it could not be contended that the note is in effect payable to John Smith or his order, because this is necessarily implied by the phrase "properly indorsed." In Forest v. Safety B. & T. Co., there are no words of negotiability in the note, and therefore it is not a negotiable instrument. "Properly indorsed" meant here "properly receipted."

Prior to this case, six cases had arisen in other states involving the question of the negotiability of the instrument. It is true some were promissory notes and not certificates of deposit, but when it comes to a determination of the negotiability of the instrument, there is no difference between the two. These cases are:

DEYO v. THOMPSON, 53 A. D. 9; N. Y. Supp. 459. (1900).

A note promising to pay Helen Deyo $300 is non-negotiable. Sec. 20 (1) was cited.

ZANDER v. N. Y. SECURITY & TR. Co., 39 Misc. 98; 78 N. Y. Supp. 960. (1902).

A certificate of deposit by a trust company, payable to the person named therein or his assigns, is not a negotiable instrument. Affirmed, 81 N. Y. Supp. 1151, 1903; affirmed 178 N. Y. 208, 1904. The Act was cited.

WESTBERG v. CHICAGO LUMBER CO., 117 Wis. 589; 94 N. W. 572. (1903).

A draft payable to order or bearer, is negotiable, citing the Act.

YOUNG v. AM. BANK No. 2, 44 Misc. 308; 89 N. Y. Supp. 915 (1904).

An instrument reciting that the depositor has deposited $300 in the defendant bank . . . which will be cashed only upon its return to the defendant by the depositor or order, is a negotiable instrument, not citing the Act.

GILLEY v. HAWELL, 118 Tenn. 115; 101 S. W. 424. (1906).

A note not payable to order or bearer is not a negotiable instrument and a former statute providing otherwise is impliedly repealed by the Act.

FULTON v. VARNEY, 117 A. D. 572; 102 N. Y. Supp. 608. (1907).

An instrument not payable to order or bearer, is not a negotiable instrument, citing the Act.

These decisions are sound elementary law, of course. They are not cited to establish what is incontestable, but to point out that when the case of Forest v. Safety B. & T. Co. was argued in 1909, had the learned judge had these cases before him, his decision could not well have been what it was. The conclusion is inevitable that in this case, as in many others we are examining, counsel did not prepare their cases thoroughly. Plain speech is in order, to arouse bench and bar to their neglect of the Act on their statute book.

Many later cases under the Act to the same effect might be cited, but this one will suffice.

WETTLAUFER v. BAXTER, 137 Ky. 362; 125 S. W. 741. (1910).

A note payable to Newton J. Baxter is non-negotiable and the writing on the back thereof of his name by Newton J. Baxter, does not make it negotiable. It is only an assignment of the note. The Act was cited. See the opinion where, p. 368 the Conference is spoken of as "a committee of gentlemen learned in the law." The Conference is much more than this. It is an official meeting of lawyers, appointed by the governors of the various states who are directed by the terms of their appointment, to meet and draft uniform laws which they shall then report to their respective legislatures and recommend them to adopt. The Negotiable Instruments Act was thus drafted and recommended, and it has been adopted in forty-six States, Districts, Territories and our Insular Possessions. This being the case, in the consideration of Forest v. Safety B. & T. Co., ut supra, the decisions in cases in other states under the same sections of the same uniform law, should have been cited by counsel and should have been followed by the court, even though no case under this section had yet arisen in Pennsylvania.

SCHERER & CO. v. EVEREST, 168 Fed. 822; 94 C. C. A. 346. (Iowa, Mich. 20, 1909).

This is another case arising under sec. 51 (25) without citing it. It was correctly held, (p. 831) that one who takes commercial paper before maturity in payment of, or as collateral security for a debt of the seller, due or not due, is a holder for value in the ordinary course of business, and protected by the same estoppels as a purchaser for cash. Excellent old authorities were cited,—but why ignore the real authority, the Act? Why ignore the forty cases that had arisen under this section by 1909, when this case was argued?

LYONS v. WESTWATER, 181 Fed. 681; 103 C. C. A. 663, (Pa. 1910), reversing s. c. 173 Fed. 111 (1909).

Without citing the Act in either case, it was held, in an action by the receiver of a failed bank against the maker of a note held by the bank in substitution for a note given by the maker to a director of the bank, indorsed by him and delivered to the bank for shares of its capital stock, the dividends on which were applied in payment of interest on the note, with an understanding that the maker should be under no liability; it is a question for the jury whether the maker was an accommodation maker for the bank or for the indorsing director and his associates. "If his accomodation was to McKinnie and his associates (the directors), the receiver is entitled to recover; and if to the bank, there can be no recovery."

Section 55 should have been cited.

McDONALD v. LUCKENBACH, 170 Fed. 434; 95 C. C. A. 604. (1909.)

Citing secs. 113, 114, 140, 186, (63, 64, 80, 115), the fact that persons who signed their names in blank upon a note by a corporation in which they were respectively the president and the secretary, and executed the note as such in behalf of the corporation, did not constitute the president and secretary individual makers. Individually they were only liable as indorsers, and they cannot be held thereon except on presentment, demand and notice of non-payment by the corporation.

It would seem clear that presentment was necessary, but why was notice of non-payment given to the indorsers necessary? For such notice is for the purpose of giving knowledge of non-payment to the indorsers, and if presented, the indorsers had knowledge thereof already. See sec. 186 (115).

This case is further interesting because secs. 113, 114, change the law in Pennsylvania and the rule in Good v. Martin, 95 U. S. 90, 1877. We have here, therefore, a ruling in a federal court that the negotiable instruments law, when adopted, supersedes a contrary rule previously established by the Supreme Court of the United States.

AMALGAMATED SUGAR CO. v. U. S. NAT. BK. of PORTLAND, 187 Fed. 746; 109 C. C. A. 494 (Oregon, 1911) affirming s. c. 179 Fed. 718, (1910).

Upon unrestricted indorsement of a check, the indorsee becomes the apparent owner and can pass good title to a subsequent holder in due course for value and without notice or actual knowledge of facts sufficient to constitute a valid defense.

Although the Act was (and is) in force in both states, Utah and Oregon, diverse citizenship in which gave jurisdiction to the federal courts, the Act was not mentioned. This is another of those cases in which the group of sections 91 to 98, (52 to 59) and the hundreds of cases under them, were ignored. It is submitted most earnestly that the Act is a code of the law of negotiable instruments according to the principles of the law merchant and in those states in which it is enacted, is the source of authority, not only in the State courts, but also in the United States courts.

KLOT'S THROWING CO. v. MANUFACTURERS' COMMERCIAL COMPANY, 103 C. C. A. (N. Y.); 179 Fed. 813, (1910) reversing s. c. 170 Fed. Rep. 311, (1909).

A promissory note, otherwise negotiable in form, but stating: "Value received, subject to terms of contract between maker and payee of Oct. 25th, 1905," is non-negotiable. At the first hearing of this case, 170 Fed. Rep. 311, 1909, the court said: "Whether the instrument in question is negotiable, is not very material here," making no reference to the Act and citing no cases. At the second hearing, ut supra, the court said, by the same judge, "The trial judge misapprehended our former opinion in this case. We did not hold that the note in question was a negotiable note * * * . It was unnecessary to determine the question of negotiability. The case as now presented, turns upon this question of negotiability." The court found the note in question to be non-negotiable, but instead of citing sec. 20 of the Act and the cases decided under it in New York and in other states that had adopted the Act, about thirty cases, many, however, not involving the same point as was involved in this case, the court cited several old New York and other cases and made no mention of the law on the statute book before them.

TRUST CO. of ST. LOUIS v. MARKEE, 179 Fed. 764. (Pa. 1910.)

Under secs. 51, 53, 55, (25, 27, 29), accommodation indorsers were held liable on a note transferred before maturity to a creditor as additional security for a pre-existing debt.

The only authority cited was Railroad Co. v. Bk. 102 U. S. 14, (1880), although since the Act there were 76 cases under sec. 51; 17 cases under sec. 53, and 24 cases under sec. 55. Fortunately it so happens that the principle followed in the case cited is the same as that followed in the Act. Had it been different there can be no question that under the rule adopted in the federal courts, the decisions under the Act in the state courts, under the Uniform Law adopted after the decision in the United States court, even though it were the Supreme Court of the United States, should be followed. Then, why do not the federal courts, in such cases, cite the real source of authority, the Act, and not an old decision of a United States court superseded by the adoption of the Act?

NAT. CITY BANK v. THIRD NAT. BANK, 177 Fed. 136; 100 C. C. A. 556. (1910.)

Where the drawee of a check paid it on the forged indorsement of the payee's name, without right or authority, the drawer can recover of the drawee.

Ignoring the Act, the court cited, as its authorities upon the points of law involved four cases, of which two were old cases, before the Act was adopted and two arose after the adoption of the Act, but neither of them referred to it. Critten v. Chem. Nat. Bk., 171 N. Y. 219, 1902, and Kearney v. Met. Tr. Co., 110 A. D. 236, 1905, affirmed 186 N. Y. 611, 1906, without an opinion. Such is the confusion arising from the indiscriminate citation of authorities without regard to the law on the statute book and without inquiring whether the cases relied upon arose under the statute or whether they arose before the statute was adopted. That the decision would have been the same, even if the court had known of the existence of the Act and the cases under it, is no sufficient excuse, for the real source of authority is the Act itself.

The particular section in question is sec. 42, (23): "When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give discharge therefor, or to enforce payment therof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

Forty-six cases have so far arisen under this section in states that have adopted the Act, not all of the decisions in which were, however, applicable to this case.

In twenty-eight of these cases sec. 42 (23) is not cited. This is an unusually high percentage in which the Act was ignored by the judges on the bench and by the counsel in the case, so far as the published reports disclose. Thirty-three of these decisions were handed down before 1910, and therefore it cannot be contended that when this case of Nat. City Bk. v. Third Nat. Bk. came on to be argued, there were no cases in point decided under the Act.

FIRST NAT. BK. of OMAHA v. WHITMORE, 177 Fed. 397; 101 C. C. A. 401. (Neb. 1910.)

As the plaintiff failed to show that the sight drafts sued on were negotiable and were delivered to the drawee for acceptance, he is not within sec. 225 (137) providing that where a drawee to whom a bill is delivered for acceptance destroys the draft or refuses to return it, accepted or non-accepted, he will be deemed to have accepted it.

It was also held that these sight drafts were presented for payment, not for acceptance.

But the court omitted to cite sec. 240 (1), 143 (1) under which presentment for acceptance is not necessary in the case of a sight draft.

IN RE HILL, 187 Fed. 214. (1911.)

Where the payee of a note given for a marginal gambling tranaction, transferred it to the plaintiff before maturity for an inadequate consideration, upon proof that the note was founded on an illegal consideration, the burden of showing that the plaintiff was a holder in due course, was upon him, under the Act, as well also under the law merchant.

Sections 91, 98 (52, 59) of the Act were cited, as well as Crawford, "The Negotiable Instruments Act," the court assuming that a holder in due course of a note given for a gambling debt may recover the full amount thereof, against the maker, "although there are some decisions to the contrary," holding that the holder must further prove affirmatively that he is a holder in due course as soon as it is shown that the title of any one who has negotiated the instrument, was defective.

The court considered the question whether the provisions of the Act should govern, or whether the general rules of commercial law should govern, "on the ground that this is a question of general commercial law upon which the federal courts may follow their own decisions in spite of the statutes,—a question that was stated, but not decided, in Forest v. Safety Banking Co. (C. C.) 174 Fed. 348.

The writer would strenuously insist that when cases arise in United States Courts in districts that include states that have adopted the Act, (or any uniform law) or where suit is brought in a federal court upon a note delivered where the Act is in force, the fact that the statute is a uniform law, framed for the very purpose of securing uniformity in the various states of the Union adopting the law, patent in the name of the Act, is reason enough for following the provisions of the Act and the decisions of the courts of cases arising under those provisions. The reason for the existence of the rule that federal courts may follow the general commercial law without regard to state decisions, is not applicable, when in so doing the federal court disregards the express provisions of a state law, and certainly, it should not be followed in the forty-six states and territories that have adopted the same uniform law, with the express and admitted purpose of securing uniformity.

After the formation of our union, at a time when the law merchant, with regard to negotiable instruments, was not generally known in this country, (and perhaps not even in England), when erratic laws and opinions not founded upon a knowledge of the law merchant, were not uncommon, there was such a consequent lack of uniformity in decisions in state courts in such cases that there was a good reason for the rule adopted in the federal courts of following general commercial law, founded on the custom of merchants, rather than to undertake to follow the discordant state decisions, for otherwise there would have been no uniformity in the decisions of cases of this nature in the federal courts, Now that we have a code of the law of negotiable instruments founded on the law merchant by a competent body of men, chosen for that purpose, which is adopted in forty-six states and territories, it should be followed in the courts of the United States in cases arising where it is in force, even though by doing so, previous decisions of federal courts, including decisions of the Supreme Court of the United States, are not followed.

NAT. BK. of COMMERCE in ST. LOUIS v. SANCHO PACKING CO., 186 Fed. 257; 110 C. C. A. 112. (La. 1911.)

Without stating the case it is enough for our purposes to point ont the Act was not cited, although the case called for citation of sections 38, 39, and the important group of sections 91 to 98 (19, 20 and 52 to 59), with the result that none of several hundred cases decided under these sections were cited, although the Act has been in force in Louisiana since 1904, while the court cited five old cases and an old text book as authorities for its reasoning. By old cases and old text book we mean cases decided and text book written before the adoption of the Act. How are we to expect uniformity in decisions under this uniform law when all the cases under the same sections of the same law, are thus ignored? And what were counsel doing who thus failed (so far as appears by the report) to place before the court as the real authorities that should govern the decision, the pertinent sections of the law on the statute book and the decisions reached in cases thereunder, whether in Louisiana or elsewhere, so long as they were in states where the Act was in force?

MELTON v. PENSACOLA BKG. & TR. CO., 190 Fed. 126; 111 C. C. A. 166. (Ky., July 12, 1911.)

It is a pleasure to come across a case in which the Act is cited and followed with citation of four cases under secs. 51, 52, (26, 27).

The court specifically states that the old law

in Kentucky was changed by these sections of the Act, and although there had as yet been no decision in the courts of Kentucky under this new law, "it is clear that under these sections of the Act, one who takes a note before maturity, as collateral security for a pre-existing debt, is a holder for value."

The court also held it to be well settled "that a bona fide holder of a negotiable instrument who, for a valuable consideration, without notice of facts which impeach its validity between antecedent parties, takes it by indorsement made before maturity, holds the title unaffected by these facts, and may recover thereon, although as between the antecedent parties, the transaction may be without legal validity," citing secs 91, 96 (52, 37), but by some strange inconsistency, citing five old cases in support thereof and ignoring the hundreds of cases decided under those sections in states that have adopted the same law.

Sec. 90 (51) is also cited and followed (a holder may sue in his own name); and sec. 27 (8), (the payee may be the drawer or the maker.) Citing many cases in U. S. courts and none under the Act, although there have been ninety-one decisions under sec. 90 (51).

AM. TRUST CO. v. CANEVIN, 107 C. C. A. 543. (Pa. 1911.)

Sec. 114 (64) changes the old rule in Pennsylvania and under this section an irregular indorser is liable to the payee and to all subsequent parties.

Where one so indorsed, adding "Trustee,' without more, intending to sign in his representative capacity, and the payee and the indorsee knew it, he is bound only in his representative capacity.

Citing the Act and the cases under it, of Birmingham Iron Foundry v. Regnery, 33 Pa. Super. Ct. 54; Kerby v. Ruegamer, 107 A. D. 491, and Megowan v. Peterson, 173 N. Y., the court said: "The negotiable instruments law has been enacted in a large number of our states. Its uniform construction is most desirable."

Were the Act treated in the same spirit in the courts generally, instead of a few scattering instances of uniform decisions based upon the Act and the cases under it, we should be furnished by this time with a body of such decisions as precedents, recognized as authorities to be followed in the state courts where the Act is in force and in courts in the federal districts in which those states are included.

At the time of this decision, 14 decisions under secs. 39, and 31 decisions under sec. 114, had been rendered. Were they on the briefs of counsel in this case? So far as the reports show, cases arising under the Act are not so prepared and presented to the courts.

FIRST NAT. BK. of SHENANDOAH v. LIEWER, 187 Fed. 16; 109 C. C. A. 76. (Neb., 1911.)

When it is established by proof that the note sued on, fair on its face, was signed by the defendant and was owned by an innocent purchaser for value before maturity, the presumption is that no one wrongfully changed it after it was signed, and the burden is therefore on the defendant-maker to prove the alteration "raising" the note from $24.00 to $2,400.00.

See secs. 91 to 98 and 205 (52 to 59 and 124) and several hundred cases under those sections. The Act was not referred to, although some of the cases cited arose under it. The very argument of the decision of the necessity for uniformity of decisions in cases arising on negotiable instruments should have led the counsel and the court to examine the Act in force in Nebraska and the decisions under it in states under the same Act.

It is in this way that the United States courts can do so much towards uniformity in decisions in such cases, instead of ignoring the Act and relying on decisions rendered before the adoption of the Act.

CARPENTER v. NAT. SHAWMUT BANK, 187 Fed. 1; 109 C. C. A. 55. (Mass., 1911.)

Under sec. 147 (87), when the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor. It was held that this applies only when the instrument is made payable at a particular named bank. Four cases under this section were not cited, and it must be admitted that they were not applicable. But why cite old federal cases when there is a specific law on the subject and it is apparent that the case under consideration is covered by that law?

YOUNG v. LOWRY, 192 Fed. 825; 113 C. C. A. 149. (Pa., 1912.)

In the federal courts, one who takes negotiable paper before maturity for value, is entitled to recover of the maker, unless it is shown that when taking the instrument, the indorsee had knowledge of facts rendering the note invalid as against the maker, or was guilty of bad faith, and the burden of proving bad faith is on the defendant.

The Act was not cited and therefore the benefit to be derived from an examination of one hundred and seventeen cases decided un-

der that section up to 1912, was lost. As in both states mentioned, New York and Pennsylvania, the Act was in force, and as Crawford, Neg. Inst. Act and one case under the Act is cited. it is remarkable that the Act itself, and the cases under it, should have escaped attention, especially as the court states, at the close of the opinion p. 830. "The whole matter of presumption and burden of proof belongs to the law of evidence. It is the law of the forum and must govern, even when a federal court, by reason of diverse citizenship, is administering the law of a state and not as here, administering the rights of parties under the federal bankrupt law." The law of the state in this case, was the Act, the Uniform Negotiable Instruments Act and not old decisions of the federal courts.

In Conclusion—to carry out the beneficent purpose of the Conference of Commissioners on Uniform State Laws, the bench and the bar of this country must do their part by looking to the Act as the source of authority in all jurisdictions where it is on the statute book, and must further become familiar with, and follow, the decisions in other jurisdictions, as well as their own, under the same sections of the uniform law.

Only by so doing can we secure uniformity of decisions under any uniform law. Like Morgan's "undigested securities," decisions made without citation of the Act or of the cases under it, in whatever jurisdiction, will remain a mass of undigested decisions, unless brought into cor-ordination in the manner suggested, and thus made a body of precedents for cases under the uniform law.

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DIVORCE—PROHIBITING REMARRIAGE.

GOODWIN v. GOODWIN.

(Supreme Court, Appellate Division, Second Department. July 25, 1913.)

142 N. Y. Supp. 1102.

A marriage in Illinois between two persons, one of whom had been divorced in Colorado within one year prior to the marriage, was valid notwithstanding Laws Colo. 1893, p. 240, § 10, providing that the court shall have power to set aside a divorce decree and reopen the case at any time within one year, but that if no application to reopen the case is made within that time the decree shall never be opened for any cause, and that during such period of one year neither party to the decree shall be permitted to remarry, since the decree, although defeasible, was neither intermediate nor interlocutory but dissolved the marriage and was entitled to full faith and credit, and the statutory prohibition against remarriage, not inhering in the judgment, but being a legislative prohibition fixing the status of divorced persons, was ineffective outside that state.

THOMAS, J. The parties were married in the state of Illinois within one year after the entry of a judgment in the state of Colorado divorcing the defendant from a former husband. Later, in an action in the state of New York wherein each of the present parties sought a separation, it was found that they had intermarried in Illinois and that the man was the woman's lawful husband and entitled to a judgment for separation.

(1) The defendant, in this action to annul the second marriage by reason of the fact that it was made within a year of the entry of the judgment in Colorado, asserts that notwithstanding the statute in that state she was entitled to marry when and where she did, and that the fact and legality of the marriage were adjudicated in the action for separation. The statute of the state of Colorado is:

"In case no appeal or writ of error shall be taken from a decree of the court granting a divorce, the court shall have power to set aside such decree and reopen such case at any time within one year from the date of entering such decree, upon application of the defeated party under oath showing good reason therefor; but if no such application be made within such time, or the same be denied, then such decree shall never be opened for any cause; and during said period of one year from the granting of a decree of divorce neither party thereto shall be permitted to remarry to any other person." Sessions Laws of Colorado, 1893, c. 80 § 10.

The decree when entered was for an absolute divorce. The statute enabled the court to reopen it and set it aside within a year of its entry for good reason shown, and pending the possible exercise of that authority the marriage of either party to any other person was inhibited. But it is only a decree closed that may be reopened. If that be not done, the decree with nothing added forever continues by virtue of its own proper initial vigor. When rendered it had all the elements of finality. But the court within a year for good reasons could set it aside as a judgment usually may be set aside for some reasons. This made it defeasible, not by its terms, but by the power of the court over it. Hence, while that possibility of reopening it remained, the parties were forbidden to marry. This was presumably to give them opportunity for reflection that might lead to their marriage to each other as well as to save the complications that would arise if the decree were reopened.

But the prohibition did not render the judgment intermediate or interlocutory, nor did it impair its integrity. Essentially it undid the marriage, and those who were united in it were disunited. Had the man died during the year,

the woman would not have been entitled to dower in his lands, nor could she as his widow have shared in his estate. If he lived, she could not for the time have demanded support from him or bound him for necessities. In fact, all the relations arising from the marriage became as if it had not been, and it was not different when the year expired. The decree, untouched, unaided, went on as before. Its only infirmity was the bare possibility that the court might, if application were made, open it. But a legal status that is determinable upon a mere possibility is none the less a fact and in all things effective while it lasts, which may be forever. The state of Colorado could for a year, or indefinitely, prohibit the remarriage of those it had divorced, and could affix a penalty to disobedience, which it could enforce. In Wisconsin, the statute declared such a remarriage within a year null and void, and when one of the parties to evade the law went into another state and married a third person, and returning invoked the aid of the laws of Wisconsin, the court of that state declared that the marriage was null and void. Lanham v. Lanham, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804, 128 Am. St. Rep. 1085. But this resulted, not from the interlocutory character of the decree or the incompleteness of the divorce, but from the legislative command that divorced parties should not remarry within a year. The court passed, not upon the effect of the judgment, but upon the effect of the statute. But the judgment in Colorado was integral. It did not await further consideration, and the courts of a foreign state are bound to give full faith and credit to the judgment so far as the court had jurisdiction, but not to a statute prohibiting remarriage. The statute of Colorado, unlike that of Wisconsin, does not declare a remarriage null and void, yet assume that it declared that one or both parties should never remarry. The case would be the same save in the duration of the prohibition. Then the court would dissolve the marriage and the state would inflexibly fix the status of the prohibited party or parties.

What would the courts of this state do if decision were required? They would abide the judgment and disregard the legislative mandate. Van Voorhis v. Brintnall, 86 N. Y. 18, 40 Am. Rep. 505; Thorp v. Thorp, 90 N. Y. 602, 606, 43 Am. Rep. 189. In the State of Washington v. Fenn, 47 Wash. 561, 92 Pac. 417, 17 L. R. A. (N. S.) 800, a statute quite similar to that in Wisconsin was considered, and it was decided that when the parties married in a foreign country, where they were domiciled, the marriage was valid, although one of the parties was forbidden to marry by the laws of the state of Washington. The decision in the case in Wisconsin, unlike the one cited, related to residents of that state, and the element of evasion of the law was also involved. But in other jurisdictions the marriage has been considered valid, although the facts and statutes were similar to those in Lanham v. Lanham. Dudley v. Dudley, 1551 Iowa, 142, 130 N. W. 785, 32 L. R. A. (N. S.) 1170; State v. Hand, 87 Neb. 189, 126 N. W. 1002, 28 L. R. A. (N. S.) 753. It should be observed that in the case last cited a statute made marriages valid in the state if valid at the place where contracted, but the reasoning of the opinion was largely independent of the statute. In State v. Yoder, 113 Minn. 503, 130 N. W. 10, the marriage of two persons, one of whom was prohibited, was considered voidable. In Szlauzis v. Szlauzis, 255 Ill. 314, 99 N. E. 640, it appeared that the statute of Illinois prohibited the party obtaining a divorce from marrying again within one year, and provided that such remarriage should be held absolutely void and the offender imprisoned for a felony. The marriage of a party to the divorce within the time limited was annulled at the instance of the other party to the marriage. But no penalty attached to remarriage under the Colorado statute. As its prohibition did not inhere in the judgment but was a legislative prohibition fixing the status of divorced persons, it is ineffective in this state.

(2) In a former suit the plaintiff in a court of this state affirmed the validity of the marriage, which he would now have declared void, and based thereon a demand for separation. The fact was found for him, and the legality of the marriage declared. That finding and judgment remain and establish the marriage. I understand that he now urges that the court was without jurisdiction to make the finding, although it was necessary to make it in order to sustain his counterclaim. See Rudd v. Cornell, 171 N. Y. 115, 127, 131, 63 N. E. 823; Earle v. Earle, 173 N. Y. 490, 66 N. E. 398. I do not conceive wherein jurisdiction was wanting, and how the adjudication of a competent court becomes nugatory because the suitor was ignorant that the fact which he asked to be found was not a fact. It suited him then to affirm the fact. The finding settled it beyond his disaffirmance.

The judgment should be affirmed, with costs. All concur.

NOTE.—*Statute Prohibiting Remarriage Within Stated Time as or Not Rendering Divorce Incomplete.*—Decision is so variant in regard to the question of marriage elsewhere than in a state prohibiting remarriage being or not void,

and so much has this question been annotated that we merely wish to suggest here what is said about incomplete divorce, if a state is thought to declare.

This is the view suggested in Lanham v. Lanham, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804, 128 Am. St. Rep. 1085, and ought to be treated at length, for if it were accepted, it would take away all distinctions in remarriages in evasion of statutes forbidding remarriages, by means of temporary absence, and those where there is a change of domicile or where for any other reason the remarriage is celebrated outside of the state whose law prohibits it. That view is that a marriage within the prohibited time being declared void, the statute in legal effect "enters into every judgment of divorce." The court asks: "This being so, must not any judgment of divorce be construed as containing an inhibition upon the parties, rendering them incapable of legal marriage within a year, which must be given full faith and credit in all other states? Are not the parties incapable of contracting such a marriage anywhere, for the reason that they have not yet been relieved of their incapacity to marry another, resulting from their former marriage, or, in other words, for the reason that their divorce is not complete until the expiration of the year." This case held that the marriage was for the purpose of evading the Wisconsin statute by two of its residents' resorting temporarily to another state. There is no need of mixing up the marriage relation in this way, for by the same token the resident finding a non-resident in the state might go across its line, and then the non-resident would be married to the resident, but not the resident to the non-resident. If, however, the divorce is not complete, then everybody stands in the same way, policy is enforced and there is no question regarding extra-territorial operation of a statute.

The instant case considers this feature and refinedly argues that the judgment it was considering was not made, by the statute, intermediate. But, if only by its being considered intermediate, the legislative direction that during the year neither party "shall be permitted to remarry any other person," can carry any force, why should not the inhibition be deemed as rendering the divorce incomplete? When also it is asserted that, if the man died within the year, the woman would not be entitled to dower, this may be true or not, but whether so or not is not necessarily determinative of whether as a matter of policy the divorce is complete. If for any reason it is not complete at home, it cannot be regarded as complete abroad. The faith and credit clause then steps in to have a judgment respected for what it is.

It seems not necessary to run down the cases *pro* and *con* where the question was treated as of statutes, which concede there was a full divorce, and yet the marriage within the prohibited time is denounced. The furthest they seem to go is to affect marriages between residents entered into upon purpose to evade the law of their domicile, and, even as to this, decision is variant. But in the instant case it is conceded that, if divorce is not complete, remarriage is not effected, and this view is suggested but not declared in the Lanham case, *supra*. If it is sound, states may enforce the policy they aim at, at home as well as abroad. C.

ITEMS OF PROFESSIONAL INTEREST.

NEWS ITEMS FROM CONTINENTAL EUROPE.

The International Society of Criminalists held their twelfth meeting at Copenhagen, Aug. 27-31, last past, under the honorary presidency of the Danish Minister of Justice, and the actual presidency of Prof. van Hamel ,of Amsterdam. The principal discussions were about the two questions mentioned in an earlier issue of the Central Law Journal, viz: Means and measures for securing society against dangerous criminals, and Reform of legal education (as far as its criminalistic side is concerned), A conclusion was reached and resolutions adopted as to the first question, mainly as proposed by Prof. Nabokoff, of St. Petersburg, and Visoiu Cornateanu, of Buccharest. The most important point seems to be the emphasis laid upon the necessity, in judging recidivists, not only to take into consideration the technical fact of the relapse, and their number, but equally to look into and consider the subjective characteristics of the criminal which cause him to become, not only an habitual, but a dangerous criminal. As to the second question, no agreement was reached and it was referred to the next meeting (probably in Rome, 1915). Dr. Heimberger, from Bonn, opened the discussion and wished to divide the legal training into two parts, one for civilists, and the other for criminalists. The latter, in addition to the ordinary course, were to be instructed in criminal anthropology, criminal psychology, criminal psychiatry, criminalistics, criminal statistics, legal medicine, penology; to this was added by other speakers such things as biology and sociology. We confess our ignorance of what is meant by criminalistics. It must have been like a douche of cold water upon the heads of all these learned Germans, when Professor Hoffding, of Copenhagen, agreed with them that all judges ought to be instructed in psychology, and then stated that he would undertake to teach them all that was required in 6 or 7 lessons.

The members seemed to have enjoyed themselves immensely. This is how a German paper puts it: "The organization of the congress, as perfected by Prof. Torp and Judge Rudlinger, was perfect. The meetings and the social gatherings, held in the more than hundred years old House of Parliament and in the Guild House of the Ancient and Honorable Shooting Society, respectively, brought home to each participant the genuineness of the old

Danish culture, which also showed itself in the splendid hospitality dispensed. They will, for a long time to come, in grateful remembrance, look back to these days in Copenhagen full of sunshine."

Carl Ludwig von Bar died August 20, 1913, 77 years old, is Folkstone, England, on his way back from the meeting of l'Institut de droit international in Oxford. Since von Bar, in 1862, not quite 26 years old, published "Das Internationale Privat und Strafrecht," a work that probably, at one time or another, he has been acknowledged as one of the foremost lawyers of our times, and he has had no end of honors showered upon him by governments, by universities, by learned societies and others. He was Dr. jur. hon. causa of Bologna, Oxford and Cambridge. He was highly beloved by all having had an opportunity to learn to know him as a man.

The "Kammergericht," of Berlin, one of the Superior Courts of Germany, which for historical reasons has been allowed to retain its old name, moved into a new building erected for it on September 18, 1913; the court consists of 36 departments or "Senaten." This court is nearly 500 years old. It used to sit "in des Herrn Kammer," and for this reason had to travel around with the sovereign, but towards the end of the fifteenth century it obtained a fixed seat in Berlin. Originally it was known as "Oberste Hofgericht," but since 1468 it has been known by its present name. In 1540 two rooms were sufficient for the transaction of the court's business; in 1735 it had to have seven; and its new building contains more than two hundred rooms. The court has always had a high reputation for its independence and impartiality, and has had to go through many a bout with Frederick the Great and other absolute monarchs of Prussia. From that time dates the popular German saying: "Ja, wenn das Kammergericht in Berlin nicht ware."

Decisions by the Reichsgericht.—A most peculiar case was decided May 3, 1913. (Urt. IV., 113/13). A had insured his life for 10,000 marks and later assigned the policy to a creditor in payment of a debt. The assignee cancelled the policy and collected the surrender value. Later in the same year, A had the policy reinstated, and then assigned it to another creditor in payment of a debt. It appeared that the assignee had paid the amount required to reinstate the policy as well as all subsequent premiums. When A died in 1910, the assignee collected the insurance policy. A's executor sued the assignee for the insurance and asserted and proved that at the time of the reinstatement and assignment of the policy A was non compos mentis. Defendant set up the defense that if this was so, the estate had suffered no loss, as it could not have recovered from the insurance company. The lower court found for the defendant, but was reversed by the Reichsgericht. A having been of unsound mind when he made the assignment, this was void, and defendant had unlawfully collected the money. The insurance company might have defeated any claim under the policy, if they chose to do so, but defendant could not set up the company's defense, which had to do with the policy itself, while his claim simply rested on the assignment therefor. This seems to be a case where an interpleader should have been ordered.

A had come to grief by relying on a notarial certificate of acknowledgement to a certain document. It afterwards appeared that as to one of the parties, an impersonation had taken place. A sued the notary for damages; his claim was sustained below, and the Reichsgericht dismissed the appeal. The notary did not know the person whose acknowledgement he was supposed to take; he had relied upon an introduction by the other party to the agreement, and upon the impersonator's seeming knowledge of the details of the transaction in question. It is true that the law leaves to the notary to form his own judgment as to what he will require in the nature of identification, but he must form his judgment and act thereunder upon his own responsibility. If he is found to have been lacking in proper discretion and precaution, he will be held responsible. Reliance upon an introduction by the other side is most negligent; on its face, it smacks of collusion. That there was nothing on the face of the transaction to arouse the suspicion of the notary, cannot be pleaded; it proves nothing, one way or the other. (Urt. III.—54/13-5/30/1913).

AXEL TEISEN.

Philadelphia, Pa.

CORRESPONDENCE.

DISTRUST OF FEDERAL TRIBUNALS.

Editor Central Law Journal:

I have read with great interest your Journal for September 26, and especially the editorial by N. C. C. He hits the nail on the head squarely as far as he goes, but, in my judgment, he does not follow the trend of his argument far enough. The other reason that federal courts are unpopular among the mass of the people is

the distrust that the wage earners feel for the honesty of these tribunals. It is wholly immaterial whether this distrust is founded on right premises or not, the fact that it exists is enough to cause one who has the interests of the nation at heart, the most serious alarm. The great bulk of the judges, men of finance and the like, are so far removed from this great mass of our citizens that they do not realize how deep-seated the suspicion is that federal judges, as a whole, are not immune from the power and touch of the moneyed interests, or corporations. Of course, most of the mentioned "high-brows" will say that only a very few people mistrust the federal judiciary, and these do not count, but anyone who has come in daily touch with these wage-earners, formed as most of them are, into labor unions knows, if he will admit the truth, that the almost universal belief among these citizens is that the rich man controls if he does not actually own the federal judiciary. It is not exaggerating the matter when it is stated that among the twenty million or so of wage earners, not one one-hundredth part believe that a poor man can get a square deal in a federal court if he be opposed by a powerful corporation, or money interest. Thus, we have, no matter whether rightly or wrongfully, one-half of the voters of the country who have no faith in the integrity of the federal judiciary. This is an alarming state of affairs, but it is true, as any member of any union will tell you, no matter what trade he is following for a livelihood. As evidence he will cite one to the fact that a corporation, or any great property, or money interest, will never agree to try conclusions with anyone in a state court, if it is possible to get the controversy into the federal court, and why? Is it because the judges in federal courts are more learned and able than in the state courts, or are they more apt to deal out equal and exact justice to the litigants? The high-brows will say, "yes," which only causes the distrustful one to smile in his sleeve. He knows, or thinks he does, the reason for the attempted change, and that is that the big power can more easily influence the federal judiciary, and be less liable to be caught at it than he would if such an effort were made to handle the state court. The thing that sticks in the common layman's mind is that while he has to take his chances with state courts, he cannot see why the big powers are not compelled to do the same thing, and as they will not submit to the state tribunals, if they can help it, the aforesaid layman, naturally concludes there is very potent reason for the aversion, and he is not slow to guess what it is. The Standard Oil case, in which Judge Landis fined that corporation $29,000,000, for violations of the law, is an example. No sooner had sentence been passed in that case, when every workingman in the country immediately said: "That fine will never be paid." Why did they say it? The fine was not excessive, so far as each count was concerned, although the aggregate was enormous. But, again, why did each one of these men of brawn instinctively make this remark? It was solely and simply their general distrust of the federal courts. Were these individuals justified in saying what they did? The result shows they had guessed rightly, and having been thus affirmed in their judgment they very naturally take the ground that any test, or most of them will, and do, prove that the distrust they hold for these courts is well founded.

And so it is. Perhaps half of the people of these United States would welcome a chance to abolish the federal courts entirely, and unless some curb is put on their ever broadening jurisdiction (?) they will be abolished by the electorate, or there will be a revolution. Too many people already believe that the greatest danger to-day to our liberty is to be found in the federal judiciary, and when that idea gets firmly enough entrenched, and it is getting stronger all the while, then will come their abolishment. The people have little patience with any institution that seeks to make of them slaves or which shackles them in their quest for a square deal, and just now at least the eye of suspicion is upon the federal judiciary, and that judiciary doesn't seem to be taking any steps to clear its skirts or to educate the masses that instead of being tyrannical, or unsafe, it is the very rock upon which the liberty of the people rests.

The seeds of distrust are firmly planted now, and it will take some heroic, right about face, turn of events to eradicate that distrust. It would pay the people and the judges to look the matter squarely in the face and remedy the evil before it is past the remedying stage.

CHAS. E. HARRIS.

Montpelier, Idaho.

UNPOPULARITY OF FEDERAL COURTS.

Editor Central Law Journal:

I have read your first page editorial in your Journal of September 26th, 1913, concerning local unpopularity of federal courts and speculation as to the causes and a remedy therefor.

Permit me to suggest that much of this feeling among the masses arises from the fact that these courts are the only ones in which matters where the government is a party, can be litigated, and in all such actions one is in the court of his adversary and heavily handicapped in the matter of costs. The adversary is paying no costs and none can be recovered from him, whether successful or not, that your adversaries' costs are very heavy with its innumerable and expensive and frequently unnecessary witnesses, and the penalty for losing is so heavy as to be almost prohibitive to persons of small means, when threatened with suit or invasion of rights, by the government. The feeling naturally arises that it is better to submit to what is thought to be unjust, illegal and even extortionate than to try to defend. Such a feeling is a fungus of very rapid growth in a community, and a single instance will give it wide fecundity. Encroachment by government upon private rights is a very delicate proposition.

As a remedy, let the government be only a little generous and say to all such, "Come freely into our court and your court whenever the government's action is complained of and where the government is a party against a resident citizen, and as your adversary is chargeable with no costs, the taxable costs chargeable against you if the government is successful shall be nothing but your own costs, and your costs shall be only one-half of the regular taxable costs of other cases in the federal courts."

The government's encroachments upon private rights are not going to be, and ought not to be

so great as to make such a law burdensome, and the resident citizen is not going to litigate with the government unless he thinks his rights under the constitution and laws are being infringed upon. If he thinks he is being discriminated against, he should have the privilege of the court's decision without too severe a penalty upon himself.

The government, with its enlarged and growing policies in its possessory and proprietary interests, its reclamation projects, power and water right claims, forest reservations and their care and pasturage and protection, and many others is frequently coming in direct conflict with supposed interests of its resident citizens of the poorer class. In these matters young men at a salary of from $85.00 to $150.00 a month are in charge representing the government and have the power to say: "You must surrender your rights and accept this, or you must do this or we will take you into the U. S. Federal courts, where, if you win you will be a loser and if you lose the costs made by the government will break you up."

There is too much truth in this, and if these courts are to restore or preserve their intended popularity, such criticisms must be met and overcome. The denial of the privilege of a decision by the courts to the poorest citizen is one of the greatest of governmental wrongs.

S. S. SHERMAN.

Montrose, Colo.

BOOK REVIEWS.

BIGELOW ON ESTOPPEL—SIXTH EDITION.

This edition of a work that is known to every lawyer is a revision by Mr. James N. Carter, Ph. B. J.M., and its appearance is explained by saying that: "Were it not for the natural and well-founded desire for the latest decisions of the courts, the first edition of this book might still answer the present purpose." This is a tribute not applicable to many books. It means we wish to see later application of the principles which but helps to fix more firmly in respect a book proving it requiring no reconstruction. What more can we say? Nothing, because to those who have not appreciated it, no commendation will make them take it up.

We content ourselves, therefore, with saying that the new edition comes in the new dress and in the latest art typographical from the well-known publishing house of Little, Brown & Company, Boston, 1913.

THE UPAS TREE.

The Upas Tree, a novel by Robert McMurdy, is written as a plea against the infliction of capital punishment. Its argument is the portrayal of the career of an innocent man whom the web of circumstances has so involved as to bring upon him indictment and conviction of a murder, of which, barely within time to save him from being hung, a dying man confesses that he was the perpetrator.

The story is told very interestingly, the trial scene being especially well presented, as also the fruitless efforts to put off the execution, all of which gives something of a thrill to a rescue occurring as the sheriff is on the point of swinging the condemned man into eternity.

An argument in the way of a statement by the condemned to be published immediately after the sentence has been executed, presents very forcibly the views of the author against capital punishment.

The book has more than a passing interest, the style being easy and flowing, the typographical make-up first-class, binding in cloth and published by F. J. Schulte & Company, Chicago, 1912.

HUMOR OF THE LAW.

The taxicab driver was about to receive his sentence.

"Prisoner," said the judge, "I am satisfied there is no reasonable doubt of your guilt. The evidence shows that you drove the deceased about the city in your taxicab for two hours, then took him to a secluded place and strangled him and stole his watch. Have you anything to say before sentence is pronounced?"

"Yes, your honor."

"What is it?"

"I'd like to know, your honor, who is going to pay the cab hire?"

Members of the Bar at Okmulgee have honored one of their number with a marriage present given under somewhat unusual conditions, and certainly in an unusual form, as the following conveyance, filed for record, will abundantly prove, to-wit:

"Donum Causa Matrimonii.

Know All Men By These Presents, That, ..., a regularly licensed and practicing attorney-at-law, and an honored and brilliant member of the local bar of Okmulgee County, Oklahoma, has successfully beguiled Grace Butler, spinster, a lady of charming personality, cultured accomplishments, and social eminence, into entering with him into the holy bonds of wedlock, and

Whereas, The maiden having been found, ensnared and entrapped, and the legal formalities having been duly complied with, the place has been selected, the time announced, the clergyman engaged, and it now remains but for the fateful words to be said, "Whom God hath joined together let no man put asunder."

Now, Therefore, For and in consideration of the premises, and of the love, regard and esteem which we, the undersigned legal brethren of the said Ralph Herbert Ellison have both for the said Ralph Herbert Ellison and for her who is about to become his spouse, wife and helpmeet, we have given and do hereby proffer, give, grant and bestow unto the said Ralph Herbert Ellison and unto the said Grace Butler one certain mahogany chest lined with the maroon tinted skin of a chamois, and bearing a plate, thereto attached, upon which there has been inscribed the surname, 'Ellison,' together with all such table devices and eating utensils, of whatsoever name, sort or kind, as are or may be contained therein.

To Have and to Hold the Same, Unto the said Ralph Herbert Ellison and unto the said Grace Butler, forever, jointly and in common, share and share alike.

In Witness Whereof, We have hereunto set our hands, this, the 25th day of June, A. D. 1913.

By Their Attorney in Fact."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Attachment**—Damages.—The measure of damages for the wrongful attachment of stock of merchandise is the value of the goods actually seized and the actual ascertainable loss of profits consequent upon the interruption of the merchant's business but such profits do not include damage to his credit, since such damage is too uncertain and speculative to be a basis for recovery.—Sterling v. Marine Bank of Chrisfield, Md., 87 Atl. 697.

2. **Bailment**—Burden of Proof.—Where property is damaged or injured while in the exclusive custody of a bailee, it is incumbent upon him to satisfy the jury that the injury was not due to his negligence. H. J. Keith Co. v. Booth Fisheries Co., Del., 87 Atl. 715.

3. **Bankruptcy**—Corporation.—A corporation's trustee in bankruptcy had capacity to contest the validity of a mortgage covering the bankrupt's real and personal property.—Pacific State Bank v. Coats, C. C. A., 205 Fed. 618.

4.——Fraudulent Conveyance.—Under Bankrupt Law, § 70a, vesting a trustee in bankruptcy with the bankrupt's title to all property transferred by him in fraud of creditors and property which might have been levied on and sold by judicial process against the bankrupt, and the substantially direct provisions of section 70e, a trustee cannot avoid a transfer unless the creditor could have avoided it.—Coleman v. Hagey, Mo., 158 S. W. 829.

5.——Title of Trustee.—A bankrupt's trustee does not take as a bona fide purchaser for value, but subject to all valid claims, liens and equities, the validity of which in the absence of federal statutes is to be determined by the local law construed by the state courts.—In re Scruggs, U. S. D. C., 205 Fed. 673.

6.——Torts.—Under Bankr. Act, § 70, providing that the trustee shall be vested by operation of law with the title of the bankrupt to all rights of action arising upon contracts, or from the unlawful taking or detention of or injury to his property a bankrupt's right of action for personal injuries does not pass to the trustee; such right being based upon a tort.—Beechwood v. Joplin-Pittsburg Ry. Co., Mo., 158 S. W. 868.

7.——Trustee's Discretion.—A bankrupt's trustee is not bound to accept property which in his judgment is of an onerous and unprofitable nature, and which would burden, instead of benefit, the estate.—In re Scruggs, U. S. D. C., 205 Fed. 673.

8. **Bills and Notes**—Negotiability.—A note containing an unconditional promise to pay a sum certain in money at the purchase price of mules does not lose its negotiability because containing a reservation of the title to the animals as security.—Exchange Nat. Bank v. Steele, Ark., 158 S. W. 969.

9.——Place of Payment.—The making of notes payable "at any bank" in a city authorized the maker to require the holder of the notes to make his election at what bank he would receive payment, and, on failure to elect, the maker could elect to make payment at a certain bank, and give notice of his election to the holder.—Stansbury v. Embrey, Tenn., 158 S. W. 991.

10.——Protest.—Protest can only be made in the case of a negotiable instrument which has been duly presented and payment refused.—Ashley & Rummelin v. Himmelfarb, Ore., 133 Pac. 71.

11. **Brokers**—Agency.—An agent employed to sell cannot ordinarily become interested in the purchase without the knowledge and consent of his principal, but he may openly and fairly buy the property at the price fixed by the principal if the latter has ful knowledge and consent of Franck v. Blazier, Ore., 133 Pac. 800.

12.——Middleman.—Where a real estate broker asists either the vendor or purchaser in effecting the sale, and makes representations to either as to the advantages of the property of the other, he ceases to be t mere middleman, and can no longer rightfully represent and collect commission from both parties.—Clopton v. Meeves, Idaho, 133 Pac. 907.

13. **Burglary**—Breaking Defined.—By "breaking" into a house is meant that the entry must be made with actual force, but the slightest force is sufficient to constitute a breaking, as the lifting of a doorlatch, etc.—Dennis v. State, Tex., 158 S. W. 1008.

14. **Carriers of Goods**—Limiting Liability.—It is essential to the validity of a contract limiting a carrier's liability that there be a consideration and that the shipper be afforded the option of having the common-law obligation.—Rustad v. Great Northern Ry. Co., Minn., 142 N. W. 727.

15. **Carriers of Passengers**—Baggage.—A gun and gun case taken by a passenger on a railroad trip not shown to be in any manner connected with the purpose and object of the trip was not "baggage.—House v. Chicago & N. W. Ry. Co., S. D. 142 N. W. 736.

16.——Elevator.—A landlord who maintains an elevator for the benefit of his tenants in the building and their guests, while not a common carrier, is a carrier for hire.—Kelly v. Lewis Inv. Co., Ore., 133 Pac. 826.

17.——Police Power.—Under Rev. Civ. St. 1911, arts. 6746-6753, authorizing railroad conductors to refuse a passenger admission to a coach provided for passengers of another race, a conductor had power to determine whether a negro in charge of a white sheriff should ride in the white or colored coach, and the company would not be liable where he compelled the sheriff to ride with the negro in the colored coach.—Gulf, C. & S. F. Ry. Co. v. Sharman, Tex., 158 S. W. 1045.

18. **Charities**—Invalid.—Bequests to unincorporated branches of incorporated associations engaged in foreign missionary work are invalid; an unincorporated society being incapable of taking a bequest.—In re Gray's Estate, 142 N. Y. Supp. 1067.

19. **Commerce**—State Regulation.—The state, in the exercise of its police power, may enforce reasonable regulations to prevent unnecessary delays in the transportation of grain within its borders; whether the shipment be regarded as intrastate or interstate in character.—Oneida Farmers' Shipping Ass'n v. St. Joseph & G. I. Ry. Co., Kan., 133 Pac. 883.

20. **Contracts**—Construction.—A particular description in a contract following a general description controls such general description.—Myers v. Wood, Mo., 158 S. W. 909.

21.——Pleadings.—Where plaintiff declared on an express contract and alleged performance, the burden was on him to prove substantial performance, and on failing to do so he could not recover on a quantum meruit.—Richardson v. Investment Co., Ore., 133 Pac. 773.

22.——Part Performance.—Where one of the parites thereto has performed in whole or in part a contract which is expressly prohibited by law, he cannot avoid the contract and recover reasonable compensation.—Norbeck & Nicholson Co. v. State, S. D., 142 N. W. 847.

23.——Waiver.—The rule that a party in default cannot enforce his contract is not applied where the facts show a waiver of the default.—Shorett v. Knudson, Wash., 133 Pac. 1029.

24. **Contribution**—Joint Ownership.—Where one of two persons jointly interested in a fund is required to sue to preserve such fund, equity will compel all interested to contribute to the cost in proportion to their respective interests.—Hodgdon v. Peet, Minn., 142 N. W. 808.

25. **Corporations**—Agency.—The president and genral manager of a corporation has authority to make a contract for the corporation for the employment of one for a year at an annual salary to perform specific services for the corporation.—Galvin v. Detroit Steering Wheel & Windshield Co., Mich., 142 N. W. 742.

26.—Estoppel.—Where money is received and used for a corporation by its executive officers, who are its trustees, the corporation is estopped to deny their authority to make the contract by which it was received.—Pacific State Bank v. Coats, C. C. A., 205 Fed. 618.

27.——Foreign Corporation.—The rule that courts will decline jurisdiction of controversies relating to the management of the internal affairs of a foreign corporation is not strictly a question of jurisdiction, but rather of discretion in the erercise thereof.—Beard v. Beard, Ore., 133 Pac. 797.

28.——Fraud and Collusion.—Where a corporation commences an action to cancel stock issued by a corporate officer in fraud of the corporation and its stockholders,and thereafter collusively plans to dismiss it, the stockholders may intervene and continue the action.—National Power & Paper Co. v. Rossman, Minn., 142 N. W. 818.

29.——Insolvency.—That a corporation is insolvent does not affect the right of a creditor who is an officer to reduce his claim to judgment, and the corporation may not defend on the ground that the judgment will result in a preference.—O'Rourke v. Grand Opera House Co., Mont., 133 Pac. 965.

30.——Insolvency.—The property of a corporation is not impressed with a trust in favor of creditors until it becomes insolvent, so that until then no general creditor may enforce a lien against the corporate property.—Coleman v. Hagey, Mo., 158 S. W. 829.

31.——Liability of Stockholders.—The intent of the parties, or the absence of fraudulent intent, is immaterial upon the question of stockholder's liability, under Rev. Laws 1905, § 3069, rendering corporate stockholders liable to creditors to the extent of withdrawals and refundments of amounts paid for stock.—Preiss v. Zins, Minn., 142 N. W. 822.

32.——Promoters.—An agreement that a promoter will purchase the stock of one becoming holder at its book value in the event of the failure of directors to employ the latter at an annual salary is not contrary to public policy but is binding on the promoter though not binding on the corporation.—Drucklieb v. Sam H. Harris, N. Y., 102 N. E. 599.

33. **Covenants**—Building Restriction. — A building restrictive covenant in a deed of a lot which provides that the lot shall be used for residence purposes only and no residence of less than $2,500 in value shall be erected is not breached by a building which when completed will be worth $2,500 and will be used for residence purposes only, though the building will be unsightly and will tend to render other property less valuable.—Maine v. Mulliken, Mich., 142 N. W. 782.

34. **Criminal Law**—Accomplice.—In a prosecution for robbery, it was not essential that the evidence to corroborate the testimony of an accomplice should in itself be sufficient to justify defendant's conviction; but it was only necessary that it tend in some substantial measure to show the truth of the accomplice's testimony and point to defendant's guilt.—State v. Briggs, Minn., 142 N. W. 823.

35.——Confession.—A confession, elicited after accused had been told while in jail that he ought to look out for himself and advised that the prosecuting witness did not want his conviction but that of his principals, is not voluntary; not being made without inducement or hope of reward.—State v. Dye, Nev., 133 Pac. 935.

36.——Consolidation of Indictments.—Where indictments and all of the counts thereof

charged accused as president of a national bank with acts of the same character and degree of offense, the court was authorized to order consolidation for trial.—Norton v. United States, C. C. A., 205 Fed. 593.

37. **Damages**—Interest.—The owner of property which has been damaged through the negligence of a warehouseman may recover interest upon the amount of his loss from the date of the warehouseman's tort or default.—H. J. Keith Co. v. Booth Fisheries Co., Del., 87 Atl. 715.

38.——Penalty Defined.—A penalty is an agreement to pay a greater sum to secure the payment of a less sum, subject to avoidance by the payment of the less sum before a contingency agreed upon happens.—Yuen Suey v. Fleishman, Ore., 133 Pac. 803.

39.——Punitive.—Where defendant without plaintiff's consent went upon the latter's land, and appropriated a part thereof, and changed its physical features by making a railroad cut contrary to plaintiff's wish, it may be held liable in punitive damages.—Kingsley v. United Rys. Co., Ore., 133 Pac. 785.

40. **Dedication**—Acts Showing.—An owner's acts, relied upon to imply a dedication of land for a street, where there is no express dedication, must clearly indicate an intent on his part to exclusively devote the property to use as a street.—City of Savannah v. Standard Fuel Supply Co., Ga., 78 S. E. 906.

41. **Deeds**—Building Restriction.—A building restriction prohibiting the erection of any dwelling house of a value of less than $2,000, made in view of a general plan of improvement of a large number of lots, prohibits the erection of a duplex.—Kingston v. Busch, Mich., 142 N. W. 754.

42.——Construction.—A deed must be so construed as to give effect to the intent of the parties manifested by the language used, subject to the rule that, if the language is susceptible of more than one interpretation, the courts will consider the circumstances surrounding the parties when they executed the deed, their situation and the subject-matter of the instrument.—Wilson v. Ford, N. Y., 102 N. E. 614.

43. **Dismissal and Nonsuit**—Trustee.—While ordinarily a plaintiff has the absolute right to dismiss his action, yet if he acts in a fiduciary capacity his right is not absolute, and if he fails to act in good faith, or acts in collusion with the defendant, the dismissal may be set aside.—National Power & Paper Co. v. Rossman. Minn., 142 N. W. 818.

44. **Divorce**—Contempt.—Where it appears by clear and satisfactory evidence that a divorced husband has neither the means nor ability to pay alimony allowed the wife by the divorce decree, and that his disobedience to the decree is therefore not willful, his failure to pay is not a contempt of court.—Boyle v. Boyle, Wash., 133 Pac. 1009.

45.——Remarriage.—Marriage in Illinois within one year after divorce in Colorado held valid, nothwithstanding Laws Colo. forbidding remarriages within one year.—Goodwin v. Goodwin, 142 N. Y. Supp. 1102.

46. **Easements**—Appurtenant.—An easement in gross will not be presumed where it can fairly be construed to be appurtenant to the land.—Wilson v. Ford, N. Y., 102 N. E. 614.

47. **Electricity**—Attractive Nuisance.—Where one maintained live wires within five or six inches of an open window while children were constantly playing near the window the negligent failure to guard the wires was the proximate cause of an injury to a child coming in contact with them.—Hayes v. Southern Power Co., S. C., 78 S. E. 956.

48. **Eminent Domain**—Damages.—Where a water company constructed a dam and substantia lworks, which apparently would continue indefinitely, the measure of a lower riparian owner's damages therefrom was the depreciation in the value of his land injured.—Miller v. Hanover & McSherrytown Water Co., Pa. 87 Atl. 706.

49.——Easement.—It is within the power of the Legislature to provide for the taking of a fee rather than an easement for a public purpose by eminent domain.—Salisbury Land & Improvement Co. v. Commonwealth, Mass., 102 N. E. 619.

50. **Estoppel**—Reliance.—That the owner of chattels had stated to the mortgagee that they belonged to the mortgagors did not estop him from reclaiming the chattels by intervention from a receiver appointed in proceedings to foreclose the mortgage, where the mortgage, when executed, was invalid as to such chattels, because intended to be effective as to them only at a later date.—Penton v. Hall, Ga., 78 S. E. 917.

51. **Evidence**—Medical Notice.—The Supreme Court takes judicial notice of the political affiliation of the Governor and of the relative strength of the Democratic, Republican and Progressive parties in the state at the last election, as matters of current, political history.—State ex rel. Harvey v. Wright, Mo., 158 S. W. 823.

52.——Market Report.—In a shipper's action for damages, a market report was properly admitted in evidence to show loss in price from the delay in transportation.—Ray v. Missouri, K. & T. Ry. Co., Kan., 133 Pac. 847.

53. **Executors and Administrators**—Appointment.—A person whose personal interests are so adverse to the interests of an estate and those entitled to its distribution that both cannot be fairly represented by the same person is not a proper person to administer the estate.—In re S. Marks & Co.'s Estate, Ore., 133 Pa. 777.

54.——Mistake of Law.—In an action against the bidder at an administrator's sale to recover the price bid, a mutual mistake of law is a good defense, providing there was full knowledge of all the facts, and plaintiff cannot in good conscience receive the money sued for.—Holmes v. Holmes, Ga., 78 S. E. 903.

55.——Removal.—Where an administrator of a partnership estate continued the business for more than six years without responsibility to any one, failed to keep thorough and accurate accounts, lost or destroyed account books, and did not file a full inventory of the partnership property as it existed at the death of the deceased partner, he should be removed.—In re Marks & Wollenberg's Estate, Ore., 133 Pac. 779.

56. **Fixtures**—Definition.—A "fixture" is an article which was originally a chattel, but which became a part of realty by physical annexation thereto by one having an interest in the realty. —Hurst v. J. D. Craig Furniture Co., S. C., 78 S. E. 960.

57. **Fraudulent Conveyances**—Subsequent Creditors.—Where the creditors seeking to have a fraudulent conveyance set aside become such subsequent to the convyance, the fraud must be actual and not constructive and must be definitely alleged.—Coleman v. Hagey, Mo., 158 S. W. 829.

58. **Frauds, Statute of**—Contract for Year.—A parol contract of employment for a year beginning on the day of the making of the contract is to be performed within one year, and the statute of frauds does not apply.—Galvin v. Detroit Steering Wheel & Windshield Co., Mich. 142 N. W. 742.

59. **Guaranty**—Construction.—In construing a written instrument to determine whether it constitutes a guaranty, the court should adopt the construction which, under all the circumstances of the case, ascribes the most reasonable, probable, and natural conduct to the parties.—Exchange Nat. Bank of Spokane v. Pantages, Wash., 133 Pac. 1925.

69. **Homestead**—Joinder by Wife.—A wife who joins her husband in deeding the homestead owned by the husband as security for a loan then made and for future advances to him, binds her homestead right for such future advances.—Staples v. East St. Paul State Bank, Minn., 142 N. W. 721.

61. **Husband and Wife**—Suretyship.—Where a married woman borrows money on her own account, she may use it as she pleases, and the fact that she uses it for another's benefit will not make her obligation to the lender one of suretyship.—Class & Nachod Brewing Co. v. Rago, Pa., 87 Atl. 704.

62.——Survivorship.—Where a husband owning mortgaged land executed a deed in which his wife joined, conveyed the land to a third person who contracted to reconvey to the husband and wife on payment of a specified sum and the wife made all the payments and survivid the husband, she acquired the property by right of survivorship.—Robson v. Townley, Mich., 142 N. W. 756.

63. **Indemnity**—Primary Liability.—Where a judgment is collected against a railroad company for the death of an employee, due to its negative negligence in failing to inspect and to the actual negligence of a lighting company in the installation of electric wires, and where the railroad company has given the lighting company due notice of the suit, the amount of such judgment may be recovered by the railroad company from the lighting company.—Central of Georgia Ry. Co. v. Macon Ry. & Light Co., Ga. 78 S. E. 931.

64. **Indians**—Tribal Relations.—A half-blood Indian woman, who had lived with and been recognized as a member of the Sioux tribe for many years, though having subsequently married a white man and adopted the customs, habits and manners of civilized life, held entitled to share in the property of her tribe, but children born to her after she had abandoned her tribal relations were not so entitled.—Reynolds v. United States, U. S. D. C., 205 Fed. 685.

65. **Injunction**—Temporary and Permanent.—An injunction pendente lite will be granted with greater liberality than a permanent injunction on the trial on the merits.—Boise Development Co. v. Idaho Trust & Savings Bank. Idaho, 133 Pac. 916.

66. **Insurance**—Waiver.—Provisions as to keeping inventories and books of account in fire-proof safe or in place not exposed to fire held conditions subsequent, which might be waived expressly or by implication.—Pace v. American Cent. Ins. Co., Mo., 158 S. W. 892.

67. **Joint Adventures**—Good Faith.—Two parties who enter into a business venture are bound to exercise the utmost good faith toward each other.—Selwyn & Co. v. Waller, 142 N. Y. Supp. 1051.

68. **Judgment**—Default.—A default judgment should not be set aside merely on the showing of a meritorious defense, but defendant must show diligence and that his failure to appear was due to a cause which would have misled any reasonably prudent person.—Perry v. Carthage Stone Co., Mo., 158 S. W. 887.

69.——Scire Facias.—While an administratrix may confess judgment in an action of scire facias to revive, such confession must be in the exercise of good faith with proper regards to the rights of the estate, and not to gain advantage to herself or others in prejudice of the rights of those legally interested.—McPherson v. Cole, Pa., 87 Atl. 708.

70. **Landlord and Tenant**—License.—A landlord is not liable for injuries to the licensee of the tenant caused by a defective stairway, which the landlord covenanted to repair in the absence of willful injury or gross negligence.—Kneiser v. Belasco-Blackwood Co., Cal., 133 Pac. 989.

71.——Release.—The election of the lessor to terminate the lease for nonpayment of rent, and the ejection of lessee in an action terminated the tenancy, so as to release lessee from liability for rent not due when he was ousted.—Yuen Suey v. Fleshman, Ore., 133 Pac. 803.

72. **Master and Servant**—Assumption of Risk.—An employee in a mine, injured while ascending by the breaking of a hoisting cable, and fall of a bucket, did not assume the risk because he could have ascended in some other way, he never having done the work before, and not having been instructed to go up otherwise, and having done what he was told to do by the old employee, to whom he was supposed to look for instructions.—Maki v. Mohawk Mining Co., Mich., 142 N. W. 780.

73.——Assumption of Risk.—A master must instruct a servant as to risks not discoverable by ordinary care.—Newberry v. Boyne City Tanning Co., Mich., 142 N. W. 765.

74.——Contributory Negligence.—Where there is no open, glaring and imminent danger, the supervision and presence of the master's foreman is a circumstance to be considered in determining whether the servant's contributory negligence is one for the jury.—Erwin v. Missouri & Kansas Telephone Co., Mo., 158 S. W. 913.

75.——Guards.—Where a ripsaw, 14 inches in diameter, set in a frame and rapidly operated by electricity, was unprotected by a guard, it was unnecessary for plaintiff to show that the master knew of the danger incident to working with or about such a saw without a guard.—Buchanan v. Lewis A. Hicks Co. Ore., 133 Pac. 780.

76.——Presumption.—The ownership of an automobile establishes prima facie that it was in the possession of the owner at the time of the accident, and that the driver was acting for the owner.—Birch v. Abercrombie, Wash., 133 Pac. 1020.

77——Signals.—Where a clay pit had vertical walls, and employees were required to work at the foot of the walls in shoveling and carrying clay into a dump car, and it was customary to give signals to the men in the pit when chunks of clay were pried off the top of the bank and allowed to fall into the pit, negligence in failing to give such signals was the negligence of the master, and not that of fellow servants; the operation being inherently dangerous.—Hanson v. Red Wing Sewer Pipe Co., Minn., 142 N. W. 804.

78.——Vice Principal.—An employee, charged with the general duty of looking after and removing defects in machines which come under his observation, or of which he receives notice, is a vice principal, and notice to him of defects in machines is notice to the employer.—Shimp v. Woods-Evertz Stove Co., Mo., 158 S. W. 864.

79.——Vice Principal.—A mine boss authorized to employ men and assign them to working places is pro tanto the agent of the operator.—Sprinkle v. Big Sandy Coal & Coke Co., W. Va., 78 S. E. 971.

80.——Warning.—Where an employer is guilty of negligence in repairing a machine, no duty devolved on the employee operating it to give notice to the employer of the failure of the machine to work properly after the repairs.—Shimp v. Woods-Evertz tSove Co., Mo., 158 S. W. 864.

81.——Warning.—Where an employer knew, or by ordinary diligence could have known, of the danger of working on the top of limekilns,

and its superintendent directed an inexperienced employee to work there, without instructing him as to the danger from escaping gas, the employer was liable for the death of the employee by escaping gas.—Fortney v. Marblehead Lime Co., Mo., 158 S. W. 859.

82. **Mortgages**—Record.—The making by the recorder of an unauthorized or incorrect notation of release on the record of a mortgage cannot prejudice the rights of the owner of the debt secured thereby.—Berryman v. Becker, Mo., 158 S. W. 899.

83. **Municipal Corporations**—Competitive Bidding.—That there was but one bid for constructing a sewer did not prevent the bidding from being competitive, where there was a compliance with the law in establishing the district, publishing the notice for bids, and letting the contract.—Myers v. Wood, Mo., 158 S. W. 909.

84.——Successor.—Where a municipal corporation is extinguished, a new one being organized to take over its property and serve the same people, the new corporation is liable for the debts of the old, even though it was only a corporation de facto.—Wilson v. Kings Lake Drainage & Levee Dist., Mo., 158 S. W. 931.

85.——Violation of Ordinance.—A prosecution for violating a city ordinance is civil and not criminal in character; and hence a complaint therefor is to be determined by the rules applicable to other civil actions.—Village of Koshkonong v. Boak, Mo., 158 S. W. 874.

86. **Navigable Waters**—Obstructions.—A riparian owner on a stream having well-defined banks and a permanent channel or bed may not place obstructions in the channel to change the natural course of the stream or for any other purpose injurious to the riparian owner on the opposite side thereof or the upper or lower riparian proprietor.—Fischer v. Davis, Idaho, 133 Pac. 910.

87. **Negligence**—Licensee.—One who maintains on his premises enticements to children thereby impliedly invites them to inspect, and an infant enticed to come on the premises is not a trespasser, and the owner is not exempt from the duty of exercising ordinary care to avoid injuring him.—Hayes v. Southern Power Co., S. C., 78 S. E. 956.

88. **Obscenity**—Police Power.—Pub. Acts 1911, No. 62, prohibiting advertising the cure of venereal diseases, is not unconstitutional but is a reasonable police regulation and should be given effect.—People v. Kennedy, Mich., 142 N. W. 771.

89. **Partnership**—Dissolution.—Dissolution of a partnership may be decreed for permanent incapacity of a partner, materially affecting his ability to discharge the duties imposed by the partnership relation and contract.—Barclay v. Barrie, N. Y., 102 N. E. 602.

90.——Interest of Partner.—A partner's interest in the firm business consists in the net balance remaining to him after the partnership debts are paid and the equities between the partners have been adjusted.—Eilers Music House v. Reine, Ore., 133 Pac. 788.

91.——Real Estate.—Real estate belonging to a partnership will be treated as converted into personalty as to the partnership, the partners, and creditors in settlement of the firm affairs, but will be regarded as reconverted into realty when the purpose of the former conversion has been fulfilled.—Fooks v. Williams, Md., 87 Atl. 692.

92. **Principal and Surety**—Evidence.—The suretyship relation between defendants in relation to the contract sued on may be established by circumstantial evidence.—Bishop v. Georgia Nat. Bank, Ga., 78 S. E. 947.

93.——Notice.—A clause in a surety bond, requiring the creditor to give notice immediately after knowledge of an act causing loss, only requires that he notify the surety company with due diligence and within a reasonable time.—Bross v. McNicholas, Ore., 133 Pac. 782.

94. **Release**—Unliquidated Demand.—A release given for a less sum than is claimed to be due is valid and binding between the parties, when the amount of the claim is unliquidated, or there is a bona fide disagreement as to the sum actually due.—Putnam v. Boyer, Mo., 158 S. W. 861.

95. **Rewards**—Person Entitled.—A reward for the arrest and conviction of an offender should be paid to the person or persons first communicating the information ultimately leading to the arrest and conviction of the offender.—Bloomfield v. Maloney, Mich., 142 N. W. 785.

96. **Sales**—Passing of Title.—In case of a sale of specific designated goods, title passes at the time the contract is made, unless a contrary intention appears.—E. L. Welch Co. v. Lahart Elevator Co., Minn., 142 N. W. 828.

97. **Tender**—Sufficiency of.—The making of a note payable at a named bank entitled the maker to tender payment there; a tender there being available to prevent a forfeiture and stop the running of interest though the note be not at that bank when payment is tendered.—Stansbury v. Embrey, Tenn., 158 S. W. 991.

98. **Theaters and Shows**—Protection of Patrons.—Where the managers of a baseball game fail to protect spectators by the use of screens, or furnish a screen insufficient in size, and a spectator, ignorant of such fact, is injured in consequence thereof, the managers are liable.—Wells v. Minneapolis Baseball & Athletic Ass'n, Minn., 152 N. W. 706.

99. **Trusts**—Evidence.—Continued exercise of acts of dominion over real property by a cestui que trust, with notice to the trustee and without protest from him, is sufficient to establish the existence of the trust.—Gray v. Beard, Ore., 133 Pac. 791.

100. **Usury**—Interest in Advance.—The deduction of interest at the highest rate permitted by law on a loan for a longer period than 12 months at the time the loan is made renders the contract usurious.—Ellis v. Terrell, Ark., 158 S. W. 957.

101. **Vendor and Purchaser**—Bond for Title.—Where the maker of a bond for title conveys the land to any person other than the obligee in the bond or his assignee, he breaches the bond.—Peterson v. Harper, Ga., 78 S. E. 942.

102.——Installments.—Where under a contract for sale of land unpaid installments did not draw interest until due, and in case of the purchaser's death the contract was to be treated as fully paid, held, that tender of all unpaid installments could not be refused on the ground that the purchaser had the right only to pay by monthly installments and not in a lump sum.—Robberson v. Clark, Mo., 158 S. W. 854.

103.——Rescission.—A purchaser's right to rescind for misrepresentation does not depend upon the motive or cause which actuated the vendor in making the misrepresentation.—Pennington v. Roberg, Minn., 142 N. W. 710.

104. **Waters and Water Courses**—Injunction.—Temporary injunction will issue to restrain a water company pending a hearing as to the justice of increased rates, from carrying out a threat to sever its water connections unless the consumers will agree to an increase in the rates.—Whitmore v. New York Interurban Water Co., 142 N. Y. Supp. 1098.

105. **Wills**—Election—A husband's right of election to take against the provisions of his wife's will is a personal privilege which perishes with him unless exercised during his lifetime.—In re McClintock's Estate, Pa., 87 Atl. 703.

106.——Partial Revocation.—An express revocation in the codicil of one part of the will negatives by implication an intention to alter it in other respects.—Bloodgood v. Lewis, N. Y., 102 N. E. 610.

107.——Signature.—Where a will written by testator himself on an ordinary blank consisting of one sheet of paper folded over to form four pages is signed by the testator and the subscribing witnesses on the first page, and by the testator alone on the third page, it is not signed at the "end of the will," and probate must be refused.—In re Reisner's Will, 142 N. Y. Supp. 1074.

108.——Undue Influence.—For undue influence to be sufficient to invalidate a will, it must destroy the testator's free agency, so that the instrument in fact expresses merely the intent of another.—In re Buck's Estate, Minn., 142 N. W. 729.